

Exhibit N-11

In the Matter Of:

JANNETTI V. STIFEL, NICOLAUS & CO.

23-01342

HEARING

January 24, 2025



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January 24, 2025

1

1 FINANCIAL INDUSTRY REGULATORY AUTHORITY

2 DISPUTE RESOLUTION

3 FINRA ARB. NO. 23-01342

4
5 In the Matter of Arbitration Between:

6
7 DAVID JANNETTI, SARAH LYN JANNETTI,

8 ADAM JANNETTI AND LEAH JANNETTI,

9 Claimants,

10 v.

11 STIFEL, NICOLAUS & CO., INC.,

12 Respondent.

13 _____/

14
15 January 24, 2025

16
17 5200 Town Center Circle, Tower 1, Suite 200

18 Boca Raton, Florida

19
20
21
22 THE PANEL:

23 Monica I. Salis, Chairperson

24 Stephanie Jeannette Charny, Public Arbitrator

25 Marc Elias Narotsky, Public Arbitrator

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

2

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JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

3

1 REPORTED BY:

2 Lisa MacDonald, Court Reporter

3 Notary Public No. HH-472774

4 J11808223

5
6 ALSO PRESENT:

7 Rosangela Diaz

8 David Jannetti

9 Jonathan Heller

10 Edward Rose

11
12 John W. Mitchell, Esq.

13 Peter Kennedy

14 Kjell Ekdahl

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

4

INDEX OF PROCEEDINGS

PAGE

CLOSING STATEMENTS:

By Claimants, Mr. Erez 5

By Respondent, Mr. Hillis 103

By Claimants, Mr. Erez 239

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

5

(Proceedings commenced at 8:08 a.m.)

CHAIRPERSON SALIS: And we're starting at 8:08.

CLAIMANTS' CLOSING STATEMENT

MR. EREZ: Good morning, members of the panel. This was Day 19 of the final hearing. And I, obviously, on behalf of both sides, want to thank you for your perseverance, your attention to detail, your professionalism and your service on this panel. We know it's a sacrifice to be here and I'm sure both sides thank you for your commitment to this longer-than-expected case.

The burden of proof on the Claimant is 50 percent plus one. Anything that tips the scales to more than 50 percent, to the extent there is a question of fact, and we will submit to you that there are sufficient admissions by Respondents that there are not factual determinations that have to be made for the Claimants to prevail, but to the extent that there are, the burden of proof is 50 percent plus one, what is more likely?

And to the extent that there are factual determinations, we believe the evidence will support that the Claimants' factual assertions have been proven in this case.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

6

1 Stifel has a burden of proof on its
2 affirmative defenses. So to the extent you hear any
3 affirmative defenses from Stifel in this case, that is
4 their burden of proof. And we submit to you, they
5 have not met their burden of proof on any of their
6 defenses.

7 It's been a little while since Chuck Roberts
8 was here, but this case is very much about Chuck
9 Roberts. And Chuck Roberts could only sell over \$3.5
10 billion of structured notes, that's billion dollars
11 with a B, and earn \$48 million in gross revenue in
12 2021, one year, by misrepresenting his custom
13 structured note strategy to investors just like and
14 especially Mr. Jannetti.

15 Chuck Roberts placed his financial interest
16 ahead of his clients. He even said the quiet part out
17 loud to his partner, David Stone, I'm calling and
18 chiseling every mother f in a text message that he
19 believed would never see the light of day, which
20 always his excuse for that text message and many
21 others, it was just a private conversation between me
22 and my best friend.

23 Well, if you don't get more candid and
24 honest than when you're having what you believe is a
25 private conversation with your best friend.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

7

1 Stifel knew that Chuck Roberts was a bad
2 actor when they hired him. He had a checkered
3 history, double-heightened supervision when they hired
4 him. They took a calculated risk in hiring him, and
5 now the bill has come due.

6 Stifel's entire defense for 19 days has been
7 to make one excuse after another for Mr. Roberts's
8 egregious misconduct. And even after two
9 adjudications, two adjudications, even after the
10 filing of 18 customer complaints, Stifel continues to
11 employ Mr. Roberts.

12 They will do nothing to discipline him or
13 stop him because he makes too much money for the firm,
14 and they are blinded by the revenue that he generates
15 for them.

16 Evidence was that Stifel has no interest in
17 actually supervising Mr. Roberts, and they were unable
18 to supervise Mr. Roberts, a bad actor that
19 intentionally sought to evade supervision by
20 intentionally, knowingly sending text messages to the
21 tune of tens of thousands, not only writing text
22 messages, but writing text messages with content that
23 he knew was prohibited, intentionally sending
24 prohibited information on a prohibited means of
25 communication, thinking nobody would ever see it.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

8

1 They are unable to supervise that person,
2 and their own expert admitted it. In a glance of
3 honesty from Mr. Kennedy, he said he's not eligible
4 for hire. In a moment of clarity, he could not even
5 utter another misrepresentation to this panel. He had
6 to tell the truth.

7 Even though Stevenson said he's eligible for
8 hire, you heard it from their own \$90,000 expert
9 witness. Not eligible for hire. That tells you
10 everything you need to know because despite their
11 denials and Mr. Kennedy's own denials that they did
12 nothing wrong, when they hired him, they did nothing
13 wrong, when he was employed there, Chuck Roberts did
14 nothing wrong, the supervision was perfect, when I
15 asked them the ultimate question, not eligible for
16 hire. Contradicted and eviscerated his entire prior
17 testimony.

18 Chuck Roberts and Stifel, in this case, over
19 the course of 18 days, are trying to do to you what
20 Chuck Roberts did to David Jannetti. Let me repeat
21 that again. Nothing could be more important. Chuck
22 Roberts and Stifel, in this case, over the course of
23 18 days, are trying to do to you what Chuck Roberts
24 did to David Jannetti, convince you that the
25 structured notes that were sold to David Jannetti, the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

9

1 XBI, KRE, and single stock notes are not high risk.

2 That's what they're trying to do in this
3 case, convince you, as they convinced David Jannetti,
4 as Mr. Roberts did, that it's not high risk. That is
5 the core misrepresentation by Mr. Roberts, and that is
6 the core misrepresentation that continues into this
7 trial -- into this trial. That is fraud.

8 Stifel chastised Mr. Jannetti for not
9 understanding that the higher potential yields and
10 coupons meant higher risk and the same time telling
11 you that a structured note with a 15 percent
12 contingent coupon is not high risk.

13 So Mr. Jannetti, you should have known
14 better that if you can get 15 percent, it's high risk,
15 but by the way, members of the panel, it's not high
16 risk. Speaking out of both sides of the mouth, and
17 you can't have it both ways.

18 So here's what's happened in this case.
19 When the answer was filed, they said the structured
20 note fit Claimant perfectly, and that the Claimant was
21 interested in speculation and a high degree of risk.
22 And the structured note fit the high degree of risk
23 perfectly.

24 So in their answer, before the award in
25 Muhlbauer came out, before the award in DeLuca came

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

10

1 out, that's their position. Then in the cases, before
2 the awards came out, Mr. Roberts says structured
3 notes, high risk. High risk. Mr. Stevenson, before
4 the award came out in DeLuca and Muhlbauer, before
5 this case started, high risk. Mr. Roberts, in the
6 Muhlbauer case, structured notes, high risk. Mr.
7 Roberts, in the Muhlbauer case, high risk.

8 Stifel, Mr. Roberts, Mr. Stevenson, across
9 the board, the structured notes were high risk. Then
10 the award in DeLuca comes out. What happens?
11 Stifel's opening statement -- which is not the highest
12 risk 7 of the investment pyramid. They deny that the
13 structured notes are high risk, Mr. Hillis in opening
14 statement.

15 Mr. Roberts, in his testimony in this case,
16 they're not high risk. Do I think it's high risk?
17 No. Mr. Roberts, in this case, I wouldn't consider
18 them high risk. Mr. Stevenson, in this case, before I
19 impeached him, I do not believe they're high risk.

20 So before the DeLuca award, everything is
21 high risk, even the answer in this case. After the
22 DeLuca award, not high risk.

23 Now, what is for you to carefully pay
24 attention to is the coordination effort between
25 Stifel's counsel and Mr. Roberts. And pay attention

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

11

1 to the words because we went back and got the
2 transcript of the opening statement, and we juxtaposed
3 it to Mr. Roberts's testimony to show you that not
4 only was there a complete reversal and change of sworn
5 testimony and position, but that it was a coordinated
6 effort by counsel and Chuck Roberts to change their
7 story and give you false testimonies and evidence.

8 And here it is, Stifel's opening statement.
9 What words do they use? We'll talk about the
10 investment pyramid. At the highest risk are
11 commodities, futures, CDs, treasuries; stocks are
12 somewhere in the middle because it's all stock market
13 risk, which is -- you're talking about the segment of
14 the stock market, which is not the highest risk of the
15 investment pyramid, commodities.

16 Track that exact language to what Mr.
17 Roberts testified in this case. In this case, he uses
18 the word commodity, medium risk, stocks with medium
19 risk, the pyramid down the middle. He uses and tracks
20 the exact same language because when they prepared for
21 hours on end, they decided that the strategy that they
22 used to defend in DeLuca and Muhlbauer should not be
23 replicated. So they changed their testimony on the
24 core issue of this case, on the core issue of the
25 case.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
12

1 Look at the words, and we'll talk about the
2 investment pyramid at the highest risk commodities
3 future, lowest risk, CD and treasury stocks are in the
4 middle. Mr. Roberts, I think in terms of the pyramid,
5 I would call it all the most conservative to the most
6 aggressive. I think this is kind of down the middle.

7 They track each other perfectly because they
8 spent hours preparing and hours preparing to deceive
9 this panel. It is a shameful, reprehensible effort
10 that Stifel, these folks right here, represent an
11 \$11.7 billion publicly traded company.

12 The CEO was here. New York Stock Exchange
13 listed company, \$11.7 billion market cap, and they
14 reached a level of desperation to win this case at all
15 costs that they have absolutely given you false
16 testimony in a very coordinated effort.

17 And how do you know what they're saying is
18 not true? Because even in this case, Mr. Jannetti --
19 I'm sorry -- Mr. Roberts, at one point, had to admit
20 that the notes were speculative. Even in this case,
21 he couldn't keep his lie going for long enough. He
22 says, yes, you believe they were speculative? I
23 believe they were speculative.

24 Just for a moment, he slipped, and then he
25 went back into that role of saying they're not high

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

13

1 risk. Lori Lucarelli, the manager, in this case, they
2 are aggressive. Ron Krichevsky, in what could be one
3 of the most telling moments in the whole case, I said,
4 Mr. Krichevsky, you're familiar with Mr. Jannetti? I
5 am.

6 Are you familiar with the single stock notes
7 that were sold to Mr. Jannetti? I am. Objection.
8 Objection. Overruled. Answer. Were they high risk?
9 Objection. Overruled. Answer. He's getting angry.
10 He doesn't want to answer. Mr. Hillis is getting
11 nervous. Finally, he blurts out in a very angry tone,
12 obviously high risk.

13 What's Stifel's entire defense in this case?
14 They're not high risk. You have the CEO of Stifel
15 contradicting Stifel's own position in this case. You
16 have Lori Lucarelli contradicting the position in this
17 case.

18 You had two experts this week in impeachment
19 contradict the position in this case because what do
20 they know? If you accept that the structured notes
21 were high risk, Claimants prevail on all claims
22 regarding the structured notes. The Claimants prevail
23 and prove their case on all claims.

24 That's why they manufactured a story,
25 changed their sworn testimony, changed their position

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
14

1 from their answer. Not only were the structured notes
2 in and of themselves linked to single stocks like
3 Dynatrace, Palantir, Twilio, DocuSign, and XBI high
4 risk, but when you combine it, \$27 million of notes,
5 90 percent of household assets, that increases risk.

6 And then when you concentrate 45 percent in
7 XBI, that increases risk. And when you concentrate 50
8 percent in single stock notes, that increases risk.
9 When you put the margin of \$10 million, that increases
10 risk. And then when you use the mortgage funds that
11 were used to invest, that increases risk.

12 All of that, even according to their own
13 experts, they admit everything I just told you
14 yesterday and the day before, all of that makes this
15 portfolio, the structured note strategy, rank
16 speculation, the highest level of risk.

17 And you know how you know it was the highest
18 level of risk? Because just a small downturn in the
19 underlying caused margin call after margin call after
20 margin call and a complete wipeout and an 87 percent
21 negative return in the structured note account in
22 2022.

23 FINRA securities rules and Stifel compliance
24 rules, we spend a lot of time on FINRA rules and
25 Stifel rules. And you know what those rules are

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

15

1 designed to protect against? This. Exactly what
2 happened here is what the FINRA rules and the Stifel
3 compliance rules are designed to protect against this.
4 This should never have happened. This only happened
5 because Mr. Roberts flagrantly and intentionally
6 violated multiple Stifel rules, multiple FINRA rules,
7 and Stifel did nothing to supervise or prevent it.

8 This is what happens when the rules are not
9 followed. This is what happens when the rule designed
10 to prevent against giving someone a projected return,
11 misrepresenting yield, misrepresenting risk, not being
12 allowed to tax, Reg BI 2111, the rule that requires
13 you to do due diligence, understand the risk of the
14 product. All of those rules are designed to prevent
15 against Mr. Jannetti's experience in three years of
16 losing \$16 million.

17 From the testimony and the evidence, a lot
18 of which we will continue to go through right now, the
19 Claimants have met their burden. And what I want to
20 focus on while I go through this is not only have they
21 met their burden, they've met their burden largely
22 with Stifel's own admissions.

23 If you just focus on the admissions that
24 they made, you will see that there is sufficient
25 evidence to find on behalf of Claimants on all claims.

1 I want to start on Tab 37 because on Tab 37
2 is what I call the statistics or the stats. These are
3 the stats in this case. So Tab 37, I'm going to go
4 kind of fast, but here it is.

5 The first page is all the accounts
6 performance From February 2020, August 2023, you see a
7 loss of 15 at the bottom, \$15,981,330. That's the
8 cumulative loss between February 2020 and August 2023.
9 You could see the month by month, you could see the
10 margin loan. Margin loan exceeds \$11 million in early
11 2022. There's also the mortgage loan of \$5.6 million.
12 That is the big picture.

13 Turning the page. Next page is structured
14 products only. And on the structured products only,
15 if you turn to the second page, the cumulative loss is
16 \$13.1 million. And you could also see on the account
17 value column to the left, that there's a high
18 watermark of \$28 million of structured notes. Those
19 are the statistics.

20 Going to the next page. This is from their
21 internal document. David Jannetti return on
22 investment, commission as a percentage of total
23 account value, 4.67 percent. Why don't you start
24 highlighting those numbers, please?

25 4.67 percent. That is the return on

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

17

1 investment. That is what Mr. Roberts was able to
2 make, 4.6 percent, on the assets in the structured
3 note account in terms of commissions. Next page.

4 I wanted to show you structured note by
5 structured note what the losses were, just so you see
6 it again. The first note, Palantir, \$2.9 million
7 loss; second note, Dynatrace, \$2.3 million loss;
8 third note, Square, \$1.5 million; fourth note, XBI,
9 \$1.6 million. You have there on a note-by-note basis,
10 so you could see what the losses were. Next page.

11 The Solutions account. The Solutions
12 account. These are the individual losses in the
13 discretionary managed account starting with Aurinia,
14 \$611,000 loss; Silvergate, \$542,000 loss. These are
15 massive losses, massive losses.

16 Next page. I'm sorry, two pages down. We
17 show you the structured note missed \$3.7 million in
18 interest payments. This is a schedule where you see
19 pink at a zero, that's where the coupons aren't being
20 paid. And the coupons that were represented as a
21 yield and were not paid, \$3.7 million.

22 Next page. Concentration in XBI, 45 percent
23 of the structured notes are concentrated in XBI. Why
24 is David Jannetti, who knows nothing about the biotech
25 sector, having 45 percent of \$28 million invested in

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
18

1 XBI, a high risk sector structured note?

2 Then you see KRE, 50 percent, but that's
3 because the KRE and the XBI were in the same note.
4 But as you heard yesterday, it's the XBI that caused
5 the losses.

6 Next page. You see here the XBI holding 45
7 percent at the end of 2021, which is the critical
8 period.

9 Next page, you see the concentration in
10 structured notes. This is on a gross basis. So this
11 number is going to be lower than what you see in
12 Stifel's own reporting because this doesn't adjust for
13 the margin. So this is on a gross basis.

14 The concentration is actually higher. And
15 even according to this, it's 76 -- 78 percent in
16 structured note. Their maximum on their internal
17 guidelines is 30 percent. Those rules are designed to
18 protect against this.

19 Next page. March 18, 2021, structured
20 products to the right, second to the right column, as
21 a percentage of household assets, 94 percent, over
22 triple, over triple their own guideline.

23 Next page shows you the household structured
24 products at 77 percent. Different point in time.

25 Next page, December 2021 shows you to the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025

19

1 right column -- to the right column structured
2 products, 89 percent as a percentage of household
3 assets, which is the metric they used, which is the
4 metric they used.

5 Next page. They're showing you the
6 performance in the notes account since inception since
7 inception, negative 86 percent annualized return.

8 Next page. To the extent that they want to
9 blame the market, we put all of the accounts and
10 showed you -- compared to the S&P, the S&P would have
11 made \$5 million while these accounts lost \$15.9
12 million. The difference between how the accounts
13 performed versus the market, \$21 million, \$21 million.
14 Those are the critical statistics in this case.

15 Stifel charged \$336,000 in margin interest,
16 \$85,000 in Solutions account fees. In total, charged
17 Mr. Jannetti \$1.2 million in commissions on structured
18 notes alone. No fewer than six margin calls.

19 The evidence in this case has proven that
20 every single structured note was solicited and
21 recommended by Mr. Roberts and that the Solutions
22 account was a discretionary account managed by Mr.
23 Roberts, they showed one or two trades where Mr.
24 Jannetti was involved in those trades. All the others
25 in the Solutions account were total discretion, and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
20

1 we'll talk about that more in a moment.

2 Now I want to go to what's in our closing
3 binder at Tab 1, and we've seen these throughout the
4 case. And these are the text messages. I want to
5 spend a moment revisiting the text messages in this
6 case.

7 And I want to start with the text to Mr.
8 Jannetti every single month, every single month,
9 sending him a structured note allocation that he was
10 prohibited from sending. He knew it was a violation.
11 He sent it anyway.

12 And it had a yield column, which
13 communicated to David Jannetti the level of certainty
14 that Mr. Roberts felt that those payments would be
15 made. It reinforced and created an expectation.

16 Now, when we talk about the risk and why
17 high risk versus not high risk is so critical because
18 you'll see heavy representation by Mr. Roberts
19 communicating low risk or communicating two things.
20 One, you're going to get your coupon. Two, you're
21 going to get your money back in maturity.

22 That's what low risk, solid, very solid, not
23 risky, almost like a (inaudible) bond. That's what
24 all of that is communicating. It's not just you're
25 not going to lose money at the end. It's you're going

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
21

1 to get your coupon.

2 Then we spent a lot of time going over these
3 text messages. The type of representations that Mr.
4 Roberts made to his clients, including Mr. Jannetti,
5 but also critically, the beliefs that Mr. Roberts says
6 he had at the time, which are reflected in those text
7 messages.

8 And under Rule 2111, under Reg BI, if Mr.
9 Roberts fails to understand the risk, just like their
10 experts admitted, Mr. Heller said it, too, if he fails
11 to understand the level of risk, if he thinks it's not
12 high risk and it is high risk, he fails suitability.
13 He fails Reg BI. He fails his disclosure obligation.

14 So the evidence is these are high risk
15 investments. It's been admitted to by the CEO, Mr.
16 Roberts, everybody. None of these representations are
17 consistent with high risk.

18 You tell someone I'm going to go more
19 conservative to more notes, it's like watching paint
20 dry, conservative double digits, making you double
21 digits and tempering volatility, slow and steady,
22 solid, money good. I mean, we've seen these
23 throughout the course of the case. All of these are
24 communicating low risk, safe, conservative. He uses
25 the word conservative.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
22

1 We go on. This is why they objected so
2 strenuously to these text messages. We'll talk about
3 that in a minute. Money good, slow and steady for
4 your retirement account, the J Jannetti, very solid,
5 making you double digits. Tells David Jannetti, if
6 you cherry pick them above 13 percent, like watching
7 paint dry, 15 percent yield with protection is really
8 good.

9 You'll like 15 percent when the market goes
10 through rough periods, almost like a substitution for
11 bonds. There are some type of notes that are risky,
12 not what we are in. For your eyes only, I think these
13 notes are super solid to Mr. Jannetti.

14 What else did he tell Mr. Jannetti? By the
15 way, none of those are communicating high risk. They
16 are communicating the exact opposite, the exact
17 opposite. I asked Mr. Ekdahl, do you agree that these
18 are money good? No. Are they solid? No. Are they
19 almost like a substitution for bonds? No.

20 Their own experts, their own experts, admit
21 that these beliefs are false, that these statements
22 are misrepresentations. That's their own expert.

23 What does he say to clients after the
24 investments go down in 2022? Nothing to worry about.
25 It's not a real decline. The notes don't reflect the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
23

1 downside protection. I'm confident we are not going
2 down 25 or 30 -- 25 or 30 percent. All good, pal.
3 These notes are doing what they're supposed to do. We
4 have nothing to worry about, nothing maturing until
5 2023. We own good stuff. We will get there. Call me
6 back to Mr. Jannetti.

7 What else did he tell Mr. Jannetti? He
8 documented text messages, which I will remind you. He
9 deleted every single text message with David Jannetti.
10 Not only did he engage in illicit texting, he then
11 deleted them. He deleted what he thought would be the
12 evidence against him.

13 Here's what he tells -- here's what he tells
14 Mr. Jannetti. How would you invest your money very
15 carefully when he's talking about investing \$6
16 million? That's not what happened here. Solid. Very
17 solid. I'll double the whole ball of wax. Their own
18 manager said, and we'll show you the testimony, that
19 is an impermissible representation about a projection
20 of future return.

21 Super solid. Where here is he communicating
22 that these are high risk? Nowhere. Nowhere. So why
23 are these texts so powerful? Anybody can come in
24 here, in a hearing room, put their hand up, take an
25 oath, and say, I'm going to tell you the truth, and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
24

1 they're going to tell you what they want to tell you.

2 You can't change a text message, can't alter
3 a text message, can't spin a text message. What you
4 said, you said; it's in writing. It is a virtual
5 reporting of what you thought, what you represented.
6 It is extremely powerful, which is why Mr. Hillis has
7 filed a motion in limine.

8 They've sought time after time to block the
9 admission of text messages with third parties. He
10 didn't want you to see the totality of the evidence.
11 Stifel didn't want you to see the totality of the
12 evidence showing just how much Chuck Roberts
13 misrepresented the level and return of these
14 structured notes.

15 And those aren't subject to memory loss or
16 mischaracterization. They're a real-time transcript
17 of what Chuck Roberts believed and was represented to
18 his clients. He admitted that his text messages is
19 what he believed and that he made representations to
20 Mr. Jannetti consistent with those text messages.

21 The text messages contain false and
22 misleading information about risk, yield, return, and
23 pricing of structured notes. That is the core of this
24 case. If you accept Stifel's answer, if you accept
25 Mr. Krichevsky's testimony, if you accept Mr. Loger's

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
25

1 (phonetic) testimony, and we'll show you other
2 evidence, Mr. Heller's testimony, Mr. Ekdahl's
3 testimony, Mr. Kennedy's testimony. These are high
4 risk.

5 Ask yourself, where in a single text message
6 did Dave Jannetti or anybody does Mr. Roberts ever
7 communicate high risk? He never does. I even asked
8 Mr. Connolly, you ever hear Mr. Roberts tell a client
9 that those are high risk? He said no.

10 The evidence is overwhelming, and there's no
11 contradictory evidence. That's why they pivoted to a
12 new position. They're not high risk because when they
13 saw the mountain of evidence, and the first two cases
14 were adjudicated, and they realized we can't escape
15 this evidence, they tried to change their story, and
16 now they're trying to sell you -- sell you, the way
17 they sold Mr. Jannetti that the notes are not high
18 risk.

19 It is shameless, and we will ask for relief
20 based on everything that's been transpired in this
21 case. Chuck Roberts's text messages and admitted
22 verbal representations all pertain to risk, which, as
23 I said, pertain to two things, the quarterly coupon
24 and the repayment of capital at maturity. There is no
25 defense to the text messages.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
26

1 The texts that he sent to Mr. Jannetti are
2 consistent with the texts that he sent to all his
3 clients, telling him, they're solid, they'll be
4 careful, they're very solid, they're prudent, double
5 whole ball of wax. Nothing is disclosing high risk.

6 When you tell someone it's very solid, super
7 solid, real solid, you are communicating stability and
8 safety. And Mr. Roberts even admitted it, and we'll
9 show you that testimony.

10 By representing yield in those structured
11 note allocations month after month, he is creating an
12 expectation and misleading Mr. Jannetti in a way
13 that -- remember, Ms. Charny, you looked at Mr. Tom
14 Lee, you said, Mr. Lee, was he allowed to send those?
15 And Mr. Lee said, no, he was not.

16 When I ask the question, I don't get such
17 direct answers. Arbitrator asks a question, you get a
18 direct answer. Not allowed to send it. Mr.
19 Stevenson, Ms. Lucarelli all admitted that the
20 representations that Mr. Roberts made to Mr. Jannetti
21 and others were prohibited.

22 David Jannetti consolidated almost all of
23 his investments with Chuck Roberts and Stifel based
24 upon the false and misleading documented and admitted
25 misrepresentations of Chuck Roberts.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
27

1 Why did David Jannetti, who sold his
2 business, had several accounts, was sitting on cash,
3 had houses that were unencumbered, why did he suddenly
4 consolidate virtually 95 percent of his investable
5 assets with Chuck Roberts? Because of the things that
6 he said to him, in addition to fermenting a very close
7 relationship with Mr. Jannetti, intentionally bringing
8 him in close, making him feel flattered and special,
9 like he was a friend, paying a lot of attention to
10 him, which Richard Roberts admitted what his modus
11 operandi.

12 Why did Mr. Roberts or why did Mr. Jannetti
13 react that way and bring in all of his assets?
14 Because Mr. Jannetti brought in assets because Mr.
15 Roberts misled him with the level of security and
16 safety.

17 Why did he agree to concentrate in
18 structured notes versus very little equity exposure at
19 Stifel? Because he believed that was the safe way to
20 go. That's what Mr. Roberts was telling him. The
21 more notes you have, the safer you are, the more
22 conservative you are.

23 What's their defense to some of these text
24 messages with other people? Out of context. Not out
25 of context. Mr. Roberts testified for four days or

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
28

1 five days. You got all the context, and there's no
2 out of context in this case. We have 18 days of
3 evidence. 18 days of evidence.

4 When I pressed their expert on text messages
5 between Chuck Roberts and David Jannetti, he claimed
6 out of context, forgetting that the out-of-context
7 argument is for text messages with third parties, not
8 with Mr. Roberts, where you have all the contact with
9 Mr. Jannetti, where you have all the context of the
10 case, but they're just claiming this out of context.

11 Well, it's not out of context. 16 days of
12 fact witness testimony, 18 days of total testimony.
13 You have all the context to understand how these text
14 messages were communicated.

15 Stifel actually has not even tried to defend
16 these text messages. They put Chuck Roberts on and
17 didn't even show him a single text message. They put
18 on their experts, didn't show him a single text
19 message because they are so deathly afraid of
20 highlighting the communications that Mr. Roberts made
21 to Mr. Jannetti, which they know is prohibited,
22 misleading, false, and violative.

23 They know it, which is why they chose to
24 ignore it. We're not ignoring it. You're not going
25 to ignore it. That's where the truth lies. You want

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
29

1 to know what Mr. Roberts said to Mr. Jannetti? Text
2 message. That's what he said. The text messages,
3 that's what he believed.

4 Mr. Hillis examined Jonathan Heller for five
5 hours and did not ask him, our expert, a single
6 question about a text message from Chuck Roberts.
7 It's just astounding. The most important evidence in
8 the case was intentionally ignored by Stifel because
9 they have no answer. They have no response.

10 They didn't put on a single witness that
11 said what Chuck Roberts texted was permitted, was
12 honest, was truthful, was accurate disclosure. They
13 put on no evidence. They couldn't, and they didn't.

14 Think about this for a moment. What did Mr.
15 Hillis go to with every witness? The white paper, the
16 new account booklet, the prospectus, none of which was
17 ever written by Chuck Roberts. None of which there is
18 evidence that Chuck Roberts is communicating what's in
19 those documents.

20 And then Mr. Hillis, in an effort to mimic
21 what the Claimants are doing goes, hey, Mr. Roberts,
22 did you make representations to Mr. Jannetti
23 consistent with what's in the white paper? Chuck
24 thought it was a good answer, so he said, yes, I did.
25 Trying to mimic the questioning that we made of Mr.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
30

1 Roberts saying, did you make representations
2 consistent with the text messages you wrote? The
3 difference is Mr. Roberts wrote the text messages. He
4 didn't write the white paper.

5 There's no evidence that he ever
6 communicated things that were in the white paper, and
7 the white paper is completely different than what Mr.
8 Chuck Roberts wrote. Nothing in the white paper says
9 that these are solid, very solid, super solid, not
10 risky, almost like a substitution for bonds. That's
11 what Chuck Roberts really believed and said to people,
12 not what's in the white paper.

13 They're complaining about the text messages
14 at the beginning of this case. They have all the text
15 messages. I only have the one -- a subset of my
16 client's with Mr. Roberts and what they produced
17 pursuant to a discovery agreement. They have all the
18 text messages that Mr. Roberts turned over, ones that
19 I don't have.

20 Did they show you a single text message that
21 supports their point of view that exculpates Mr.
22 Roberts? Not one. Believe me, if they had
23 exculpatory text messages, something that was helpful,
24 when Mr. Roberts was saying to a client, by the way,
25 these notes are really risky, and you should be

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
31

1 careful, you might lose a lot of your money, they
2 would show them to you. They don't have them.

3 This is Chuck Roberts's own real-time words.
4 He's caught in the act. These are false and
5 misleading representations. And he knew what he was
6 doing because he was doing it on a private device,
7 knowing that it wasn't monitored or supervised. He
8 tells clients like Mr. Jannetti, don't pass the sheet
9 around, for your eyes only.

10 Chuck Roberts admitted he misled Stifel for
11 years by texting regarding firm business and telling
12 them that he's in compliance every year in an
13 attestation. And he misled the firm itself, but
14 they're responsible for his conduct. They are
15 vicariously responsible, whether they knew what he was
16 doing or not, for everything that he did.

17 But what happened? What happened with the
18 structured notes that we proved in this case, in your
19 materials that we gave you? This is what happened.
20 What tab is that? Tab 2. Chuck Roberts falsely
21 believed and represented that his high risk structured
22 notes were not high risk.

23 Here's what went down. Mr. Roberts falsely
24 believed he possessed the skill and expertise to
25 create custom structured notes that were not high

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
32

1 risk, generating existing yield and reserve capital.
2 Here's his own -- here's the evidence. I'm confident
3 we are not going down 25 percent or 30 percent. The
4 protection has been the barrier, which is always new
5 to volatility. You are massively protected.

6 Question, did you think that you were
7 sophisticated and experienced in putting these notes
8 together that you knew how to create the right mix of
9 barriers and underlying to generate the double digit
10 yield and get capital back at maturity? Yes.

11 Did you consider that the note high risk?
12 No. Did you disclose to Jannetti it was high risk?
13 No. Did you -- and I asked him that for every single
14 one. So he thinks that he's got the skill to use
15 these custom notes that he's created, use the barrier,
16 which he always thought would protect against loss of
17 capital. That's what he thinks in 2020, 2021, up
18 until the end of 2021.

19 What representation did he make before the
20 end of 2021? A structured note for significant
21 downside protection is prudent. Conservative double
22 digits. I will make you double digits to Mr.
23 Jannetti. The notes are super solid. The structured
24 note strategy is really solid.

25 So he thinks he could conserve capital, use

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
33

1 the barrier, pick the right underlying. He does the
2 back testing, and he understands the risk of the
3 underlying, and he could predict that it's not going
4 to go down more than the barrier amount. That's what
5 he believes. That's what he represents.

6 What happens? By the end of 2021, the
7 structured notes begin to default. They go below the
8 barrier in December for the first time. Coupon
9 payments are not being made. What happens? Nataliya
10 Popel, the structured products desk, is alerted.
11 She's concerned. Mark Stevenson says, there were
12 meetings that went up to the highest level. Chuck
13 Roberts denies it.

14 Mr. Roberts makes a decision. XBI and
15 single stock structured notes, which are defaulting in
16 late 2021, early 2022, he determined no longer have a
17 reasonable basis suitability. Sir, you made a
18 reasonable basis suitability determination that you
19 should no longer offer single stock and XBI note to
20 your clients in January 2022? Yes.

21 He believed XBI single stock note is not
22 suitable for anybody. Mr. Jannetti is sitting on over
23 \$20 million of those notes. He doesn't tell him to
24 sell. He doesn't recommend to mitigate. He doesn't
25 tell him I've lost confidence; these aren't suitable

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
34

1 for anybody.

2 He just stops offering them, which is a
3 complete admission because the only thing that changed
4 is not the risk, is Mr. Roberts's understanding of the
5 risk. He now understood that it was not what he
6 thought it was previously, and he changed his
7 behavior.

8 You don't change your behavior unless you
9 realize that what you were doing before was incorrect
10 or you had a false understanding before. If the S&P
11 goes down 30 percent, you don't stop selling the S&P.
12 The S&P doesn't change because it went down.

13 It's Mr. Roberts's understanding of the risk
14 that led him to stop offering those notes, and then
15 when KRE went down, he stopped offering those and
16 hasn't offered a single stock or sector note since,
17 not since 2022.

18 Okay. He didn't think they were high risk.
19 He doesn't represent their high risk. He tells
20 clients they're not high risk. He has an epiphany, a
21 realization, determines they're not suitable for
22 anybody. And what's the evidence? They were high
23 risk. Answer. We saw the answer. The answer in this
24 case, in this case, the structured notes fit the
25 Claimants' risk profile perfectly, high degree of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
35

1 risk.

2 In this case, Ron Krichevsky, the single
3 stock notes, obviously high risk. Chuck Roberts in
4 the DeLuca case, high risk. Mark Stevenson, high
5 risk. Chuck Roberts in the Muhlbauer case, high risk.
6 Not high risk, high risk. This is what he knows now.
7 This is what everybody admits. This is what he
8 believed before. That is what happened in this case.
9 That is the evidence.

10 That is a violation of the suitability rule.
11 That is a violation of Reg BI. Mr. Roberts admitted
12 he never disclosed to Mr. Jannetti that any of the
13 structured notes were high risk, never disclosed that
14 the strategy was high risk, never disclosed that
15 anything that was taking place at Stifel was high
16 risk.

17 Now, let's take a look at Tab 4. Tab 4 is
18 the SEC settlement with Stifel. And if we go to the
19 fourth page, you'll see a Tab No. 18. Stifel failed
20 to implement a system reasonably expected to determine
21 whether all personnel, including supervisors, were
22 following Stifel's policies and procedures regarding
23 texting.

24 While permitting personnel to use approved
25 communications methods for business communication,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
36

1 Stifel failed to implement sufficient monitoring to
2 ensure that its recordkeeping and communications
3 policy were being followed. That's Stifel admissions.

4 Tab 5. Chuck Roberts erroneously believed
5 he could create custom structured notes with a barrier
6 that would preserve capital and generate yield. We
7 put in Tab 5, the testimony that you see on the left
8 panel on this blow up. Exactly what we just went
9 through is in Tab 5, and you can see the testimony
10 both in this case and the impeachment.

11 We also show you the text message he wrote
12 in December 2021. He says, I'm confident we are not
13 going down 25 percent to 30 percent, a 10 to 12
14 percent correction could happen at any time.

15 That tells you everything you needs to know.
16 He never thought the barrier was going to be breached.
17 The barrier is the 25 to 30. I'm confident we are not
18 going down. Then it goes down, then he determines
19 it's no longer suitable for anybody.

20 Tab 6. We went over some of these text
21 messages to Dave Jannetti. They are all solid.

22 Next page. Very solid. Next page. With
23 the structured note allocation, I think these are
24 super solid. And then I asked him, on Page 132, would
25 you agree with me that what you were communicating and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
37

1 the strategy you were recommending in structured notes
2 will pay the coupons that you're representing and
3 investors will get their capital back? Yes. That's
4 what he's communicating to Mr. Jannetti. You're going
5 to get your coupons. You're going to get your capital
6 back.

7 Page after page of testimony by Chuck
8 Roberts. Solid implies you believe these notes will
9 pay all their coupons and pay part maturity, correct?
10 Absolutely. That's my intention. And we have page
11 after page of evidence of what Chuck Roberts believed
12 was the risk.

13 Let's go to Tab 7. Chuck Roberts. Tab 7.
14 Chuck Roberts and Tyler Connolly admitted that Chuck
15 Roberts never represented the structured notes were
16 high risk to Dave Jannetti or any other clients.
17 Chuck Roberts's testimony right here. Second page.

18 In regards to the sector notes, you did not
19 disclose to Mr. Jannetti that they were high risk or
20 aggressive, correct? Correct. Next page, Chuck
21 Roberts. Did you disclose to Mr. Jannetti it was a
22 high risk note? No. Next page.

23 Next page at the bottom. So if they're not
24 high risk and they're not speculative, you would agree
25 with me you did not disclose to Mr. Jannetti that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
38

1 these particular structured notes that he bought in
2 August were high risk or speculative? I did not.

3 There's no dispute. He never believed,
4 according to him, nor disclosed that people were high
5 risk.

6 Tab 8, Stifel, Chuck Roberts, Mark
7 Stevenson, Lori Lucarelli, and Tyler Connolly admitted
8 and swore that the structured notes were high risk.
9 And Chuck Roberts testified it was absurd for David
10 Jannetti not to believe they were high risk. He gave
11 that testimony in this case.

12 So here's their answer. Tab 8. Here's
13 their answer. Third page. Mr. Jannetti represented
14 to Stifel that the investment objective was
15 speculation, which is defined as accepting a high
16 degree of risk. And on the page before, on the page
17 before, investing in structured notes and high growth
18 potential stocks fit Claimants' risk profile
19 perfectly. That's what I had on the board before.

20 Then you have Chuck Roberts's testimony.
21 Let's go to Lori Lucarelli. I'm sorry. Mark
22 Stevenson. Mark Stevenson, in the DeLuca case, Page
23 1328. Do you agree structured notes, the auto call
24 contingent notes he sold were high risk? Yes. So
25 before the award comes out in DeLuca, he says they are

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
39

1 high risk.

2 Then the new strategy by Stifel, let's deny
3 they're high risk because we can't win a case if we
4 say that, changes his testimony. Lori Lucarelli, in
5 the Jannetti case, the structured notes that Mr.
6 Roberts sold to clients in 2021, do you believe that
7 they are high risk? Single stock notes are high risk.

8 The single stock structured notes, would you
9 consider them high risk? Yes or no? Yes. Higher
10 risk. No. I'm asking high risk. Answer, yes. Lori
11 Lucarelli, the manager.

12 Again, all this testimony is contradicting
13 Stifel's position in this case that the notes are not
14 high risk. They said it was in the answer. They said
15 it was through their witnesses in every prior case.
16 Some other witnesses in this case said it was, yet
17 they're going to get here and for many hours and tell
18 you the structured notes are not high risk.

19 Let's move on to Tab 9. Tab 9. Chuck
20 Roberts testified that in January 2022, he determined
21 that the single stock and XBI structured notes lacked
22 reasonable basis suitability. It failed to recommend
23 that David Jannetti sell his single stock and XBI
24 notes and admitted that his prior beliefs were
25 incorrect. He actually admitted it.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
40

1 Take a look at Page 647. Contrary to
2 your -- contrary to the belief in which you are
3 confident that the underlying security such as XBI and
4 KRE would not go down 25 to 30, that is exactly what
5 happened. Yes.

6 Contrary to your prior belief and
7 representation, the structured note strategy
8 recommended did not work, did not work nicely,
9 correct? During the period of time, the specific
10 notes that Jannetti bought did not work nicely.

11 Contrary to your prior belief and
12 representations, the structured note strategy you
13 recommended was not solid, very solid, or super solid,
14 correct? The witness, no, it wasn't super solid
15 during the finite period of time the notes Mr.
16 Jannetti decided to buy.

17 Contrary to your prior belief and
18 representation, the structured notes you created and
19 sold to Mr. Jannetti were not like a substitution for
20 bonds, correct? Answer, they were not like a
21 substitution for bonds, correct.

22 Mr. Roberts, in his own admission, is
23 admitting that the representations he made to Mr.
24 Jannetti to buy these notes were not truthful, were
25 not accurate. He's admitting it. These are his

1 admissions.

2 Let's go to Tab 10. Tab 10, we show that --
3 and by the way, this is meant for you to have access
4 to when you're deliberating, so I'll hit some
5 highlights, but this is all here for you to review in
6 making your very important decision in this case.

7 No. 10, Stifel, Chuck Roberts, and Mark
8 Stevenson changed her previous position and sworn
9 testimony and now contend the structured notes were
10 not high risk. And we show you in Tab 10, contrary to
11 positions and testimony in the DeLuca case and the
12 Muhlbauer case, the same witnesses are contradicting
13 themselves, which caused me to impeach them.

14 And here it is. Chuck Roberts, in the first
15 few pages, denying that they're high risk. Moving
16 forward, Mr. Stevenson, Page 749, you agree the auto
17 call contingent notes that Mr. Roberts sold his
18 clients were high risk? No, I don't believe that.
19 Well, that's in the Jannetti case.

20 I then had to impeach him with his testimony
21 in Muhlbauer and DeLuca, where he did say they were
22 high risk. All part of an effort of Stifel, in this
23 case, desperate to win this case, will say anything to
24 win, including changing all of its prior positions and
25 testimonies and trying to convince you of what they

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
42

1 convinced Mr. Jannetti, that the notes weren't high
2 risk.

3 Let's keep going. Tab 11.

4 CHAIRPERSON SALIS: You have two minutes
5 left.

6 MR. EREZ: Before the break time?

7 CHAIRPERSON SALIS: Yes.

8 MR. EREZ: I'm happy to take a break. Tab
9 11. Chuck Roberts admitted he never disclosed any
10 structured note underlying security implied volatility
11 with Dave Jannetti. Implied volatility is the single
12 most important metric of risk that Stifel uses, that
13 Nataliya Popel uses, that Chuck Roberts's team uses.
14 It's the only metric that they use.

15 And I asked Chuck Roberts, did you ever
16 communicate or discuss with Dave Jannetti implied
17 volatility? Answer, no. Number 12. And then I'll
18 take a break. Chuck Roberts admitted he knowingly
19 intentionally sent David Jannetti prohibited yield
20 representation on structured notes.

21 I asked him about the structured note
22 allocation, and on Page 144, I said, you understood
23 that you were not permitted to communicate to your
24 client any projection or prediction of future
25 investment results. Yes. You were prohibited from

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
43

1 providing a prediction of future investment results
2 because it is misleading to your client. He then says
3 yes.

4 Next page. Page 158. He admits that when
5 he joined Stifel, he sent the structured note
6 allocation with yield. He was told he couldn't send
7 it. And then Page 300, question, when you sent this
8 document, you knew you weren't supposed to send to Mr.
9 Jannetti. You violated the rule in the Stifel manual
10 against communication regarding securities pending
11 distribution. Answer, yes.

12 This document that contains a yield column
13 also violates the rule against projecting or
14 predicting future investment results. Answer, yes.
15 These are all admissions. It's one admission after
16 another. And when you put all the admissions
17 together, they prove all the Claimants' claims. I'm
18 happy to take a break there.

19 CHAIRPERSON SALIS: Very well. Go off the
20 record.

21 (OFF THE RECORD)

22 (ON THE RECORD)

23 MR. EREZ: And let's go back to Tab 8 for a
24 minute. And I wanted to go -- I wanted to make sure
25 that the panel had a chance to review Dr. McCann and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
44

1 Stifel's information on implied volatility because
2 we've all come to see how important this information
3 is.

4 And at Tab 8, in the back, I've included Dr.
5 McCann's portion of his presentation on implied
6 volatility. And I wanted you to understand it's not
7 just that the CEO, the experts, Chuck Roberts, and the
8 prior cases are saying that it's high risk. This is
9 the factual background. This is the information that
10 supports what everybody says that the single stock
11 notes, the XBI notes are high risk. Take a look at
12 this.

13 Got the implied volatility for the S&P and
14 the implied volatility for the XBI in orange, it's
15 double -- it's double as risky as the S&P. Then if
16 you turn the page, you get to the single stocks.
17 They're double and triple as risky as the S&P. So I
18 wanted to -- and then if you go stock by stock, and
19 you could see the level of risk is implied volatility
20 measurement that everybody's using to measure risk.

21 And this substantiates exactly what Heller
22 said, exactly what Chuck Roberts said in prior cases,
23 what Mr. Krichevsky said in this case. These are high
24 risk investments.

25 So now having done that, let me go back to

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
45

1 Tab 13, and I'm going to run through this a little bit
2 quicker now. Starting on Tab 13, we have the tax
3 (inaudible) and the testimony regarding Chuck Roberts
4 telling David Jannetti to cherry pick.

5 So this whole issue about, well, you didn't
6 buy the full basket of structured notes, you cherry
7 picked. Well, cherry picking was a strategy that Mr.
8 Roberts told Mr. Jannetti about in a text message. He
9 confirms it, and he confirmed that he told him he
10 could do about 13 percent if he cherry picked. That
11 was Mr. Roberts's strategy.

12 Tab 14. Wanted to show you again, the way
13 that these notes are supposed to be created. And it
14 says right here on the client's unique market views,
15 the client's market views. But what do we see in this
16 case? That Mr. Roberts created that based on his
17 views, and it was so telling.

18 I wanted to skip to Nataliya Popel's
19 testimony, which is on the second page and at Page 48.
20 And remember, she's the head of the structured
21 products desk. And I asked her, did you know that the
22 custom notes that Mr. Roberts was creating were not
23 tailored to be the particular client's personal market
24 theme or idea, but tailored to meet Mr. Roberts's
25 ideas?

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
46

1 Objection. Answer, witness, so I didn't
2 know, and I don't believe that's the case. I asked
3 her, you don't believe what's the case? Well, the way
4 you asked the question, that it's not based on client
5 views; it should be. That's the head of the
6 structured products desk contradicting Stifel's own
7 position in this case.

8 Chuck Roberts inverted the whole process.
9 Custom notes, speak to your client, find out what they
10 want, find out their concern, solve for those
11 concerns, create a note based on what the client
12 wants. Mr. Roberts created a note based on what his
13 views were and then sold it to everybody, including
14 Mr. Jannetti.

15 That creates a conflict of interest. That's
16 not suitability. That's not Reg BI. That's not
17 customizing for the client. That's inverting the
18 entire process. And what you find on the next page is
19 that when Mr. Krichevsky was asked about this in the
20 very first case, when he wasn't prepared for it,
21 didn't know what was coming, I asked him the same
22 thing.

23 I said, are you familiar with this process?
24 And he goes -- look at his answer. His answer is, I
25 think you're misstating the process, counsel. And if

1 I may, structured notes are sold by prospectus, and
2 they're done with the input of the clients, the input
3 of the clients. That's --

4 CHAIRPERSON SALIS: What page?

5 MR. EREZ: That's Page 1960. It's on the
6 screen right now.

7 The input of the client. So you got a
8 structured product test. You got the CEO saying that
9 the entire process -- the entire process by which Mr.
10 Roberts customizes and sells notes is against Stifel
11 policy.

12 Tab 15. Chuck Roberts admitted that the
13 only way he can make over 5 percent ROI, return on
14 investments, meaning commission level, is by selling
15 structured notes.

16 Tab 16. Tab 16, Mr. Roberts wrote in text
17 messages and said he had a belief that the price of
18 the structured notes on the Stifel system don't take
19 into account the downside protection.

20 Well, when I asked Mr. Stevenson at Page
21 782, he disagreed with him. So when you have to
22 determine, does Chuck Roberts understand what he needs
23 to understand about structured notes, the answer is
24 no, according to their own manager.

25 Tab 17. Chuck Roberts admitted that the new

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
48

1 account forms that Stifel hangs its hat on in their
2 answer -- in this case and said, look, the client want
3 us trading a speculation. Chuck Roberts admits that
4 had nothing to do with David Jannetti. That was
5 Stifel policy. That was his internal procedure.

6 David Jannetti never told him that's what he
7 was interested in. And more importantly, what we saw
8 was the way he presented the strategy, low risk, 12
9 percent to 13 percent return, yield, not high risk,
10 not speculative, he admits he never presented a
11 speculative.

12 And what did Mr. Heller and Mr. Kennedy both
13 admit? You can't represent a strategy as being low
14 risk and then document it as high risk in the new
15 account forms. That's a violation of the suitability
16 rule. That's what happened here.

17 Tab 18. You know, there's a big effort here
18 to blame Mr. Jannetti. You should have read the
19 prospectus. You should have read the white paper.
20 You should have known Chuck Roberts was misleading
21 you. You should have known that Mr. Roberts was
22 telling you time and time again things that were not
23 true.

24 Consider this. Consider this. Stifel is
25 the seventh largest bank -- seventh largest

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
49

1 broker/dealer in the country, in the country, \$11.7
2 billion market cap. It has thousands of employees,
3 compliance personnel. They have a legal obligation to
4 supervise Mr. Roberts and Mr. Roberts's
5 communications.

6 But Dave Jannetti, Dave Jannetti, sole
7 individual investor, he should have figured out that
8 Chuck Roberts was misleading him better than Stifel,
9 who had a legal obligation to supervise Mr. Roberts.

10 So Stifel couldn't figure out that Mr.
11 Jannetti (sic) was misleading clients, but Mr.
12 Jannetti should have figured it out. That's literally
13 impossible to accept that proposition, but that is the
14 Stifel defense. You, Mr. Jannetti, should have
15 figured out that Mr. Roberts was telling you something
16 wasn't true.

17 And by the way, you should have understood
18 the risk better than Mr. Roberts. And I asked their
19 own witnesses, and I asked their expert this week.
20 Did Mr. Jannetti have an obligation to understand the
21 risk better than Mr. Roberts? The answer was, of
22 course not.

23 Tab 19. Tab 19, Mr. Connolly admits that he
24 puts all of his -- that he puts his clients in -- he
25 puts his clients in structured notes, that he

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
50

1 concentrates them in structured notes. There was
2 nothing unusual about -- nothing unusual in this case
3 about Mr. Jannetti being concentrated in structured
4 notes or concentrated in XBI notes.

5 Tab 20. Chuck Roberts admitted that he
6 recommended that clients borrow on margin and that
7 he -- recommended that Dave Jannetti invest on margin.

8 This is his own testimony, his own
9 testimony, in this case where I asked him, did you
10 recommend that he invest on margin? Here. Second
11 page. Page 460. These were all solicited trades.
12 Yes. You recommended that David continue investing
13 using margin, correct? Yes. He recommended the
14 margin.

15 Page 513. You always counsel your clients
16 to hold the structured notes to maturity. Yes. Your
17 strategy for him was to hold the leveraged portfolio
18 of structured notes. Yes. I was telling him to hold
19 the structured notes whether he maintained leverage or
20 not. That was his testimony.

21 And then if you go to the very last page of
22 Tab 20, Page 62, this is when they brought Mr. Roberts
23 back. Did you recommend that David Jannetti continue
24 investing using margin, correct? Yes or no? Yes. As
25 he was investing, I knew that he was investing on

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
51

1 margin, so that is a recommendation, yes.

2 All the structured note strategies was
3 solicited, recommended. Use of margin was
4 recommended. Mr. Roberts admits it despite their
5 denials.

6 Tab 21. Chuck Roberts admitted that his
7 management of the Solutions account was not consistent
8 with strategic allocation models, unsuitable and
9 inconsistent with David Jannetti's documented risk
10 tolerance objectives and risk assessment. So we went
11 over this. I won't spend much time, but here is what
12 the Solutions account should be.

13 You have to have a well-defined approach.
14 You have to have a philosophy statement. Here's the
15 philosophy statement for the Solutions account. It's
16 supposed to be a blended portfolio, income and equity,
17 75 percent third-party managers, moderate. And here's
18 the benchmark. Here's the benchmark. Meaning, here's
19 what it's supposed to mimic.

20 And Mr. Roberts admits, not even close. He
21 admits it. It's a discretionary account. A
22 discretionary account. He has complete control, buy
23 and sell, what to buy, what to sell, how much, when,
24 complete control. And they've got all of these built-
25 in safeguards to protect clients who give complete

1 faith to a broker.

2 And he's supposed to follow solutions and
3 the philosophy statement, and he completely disregards
4 it. Their own experts admit it. However, Mr. Kennedy
5 misrepresented something to you. He said that Mr.
6 Jannetti rejected a Solutions account proposal for a
7 different type of investment. He rejected it.
8 Completely false.

9 There is no solutions proposal that Mr.
10 Jannetti projected. There were other proposals they
11 showed that had the word "strategic allocation", but
12 it was for the entirety of the portfolio, not specific
13 to Solutions.

14 And there's testimony about why that was
15 implemented or not. Had nothing to do with the
16 Solutions account. That was a misrepresentation by
17 their expert, and I defy them to show you a Solutions-
18 based proposal for the Solutions account that Mr.
19 Jannetti rejected. Did not happen.

20 Tab 22. Here's the philosophy statement.
21 It's right there. Put it right there at the beginning
22 of Tab 22, and you could see it was not managed in
23 accordance with the philosophy statement.

24 Mark Stevenson, Tom Lee, Lori Lucarelli, all
25 admitted that Chuck Roberts's Solutions strategic

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
53

1 allocation model was required to be based on the
2 philosophy statement. Required. Stifel will have you
3 believe that philosophy statement is meaningless.
4 That's not the evidence in this case.

5 Tab 23. Tab 23, testimony by Chuck Roberts
6 admitting that he knowingly violated Stifel's policy
7 prohibiting texting. Knowingly violated. Consistent
8 with bad actor behavior, intentionally evading the
9 rules.

10 Tab 24. Mark Stevenson and Lori Lucarelli
11 admitted that Stifel's hiring of Chuck Roberts,
12 contingent upon being placed on heightened
13 supervision, was unprecedented. People have you
14 believe, oh, this is business as usual, hiring someone
15 with Chuck Roberts's regulatory record.

16 And here it is. Here's his regulatory
17 record. Sorry. Here it is. Here's when they hired
18 him, 2016. All of this is before. This is what you
19 call a bad actor.

20 When you hire someone with this level of
21 complaints, you're taking a known risk. You're taking
22 a known risk that that person has demonstrated an
23 intent to defy the rules of the industry.

24 They knew it when they hired him, and he
25 performed exactly in conformance with that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
54

1 demonstrated intent and that bad actor proclivity
2 because when they put up on double heightened
3 supervision in 2016, State of Colorado, State of New
4 Jersey, what did he do? He immediately started
5 texting. Immediately. Even while under double
6 heightened supervision.

7 Tab 25. Tab 25, Mark Stevenson admitted it
8 is a misrepresentation that structured notes are
9 almost like a substitution for bonds. So we're
10 showing you in Tab 25, showed Mr. Stevenson, the
11 representation that Mr. Roberts made and asked him,
12 was he permitted to make these representations?
13 Answer, no, he's not. No, he's not. If I would have
14 seen it, I wouldn't have allowed it to be said.

15 All of these communications designed to
16 communicate safety and security were all prohibited
17 communications.

18 Tab 26, Mark Stevenson says that senior
19 management was involved in the decision to stop
20 selling single stocks in XBI structured notes. That
21 was his sworn testimony. Chuck Roberts denies it.
22 Well, someone's not telling you the truth. It doesn't
23 really matter because at the end of the day, he
24 stopped selling those XBI single stock structured
25 notes because he determined they weren't suitable for

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
55

1 any clients, and he failed to take any action.

2 And by the way, Dave Jannetti wouldn't have
3 lost 12 million out of 13 million in notes had he
4 liquidated his notes in January of 2021.

5 Tab 27. Mark Stevenson admitted that David
6 Jannetti lacked the financial ability to cover margin
7 calls linked to his leveraged structured note
8 strategy. The issue of financial ability, the issue
9 of financial ability is part of suitability.

10 This portfolio was unsuitable for so many
11 different reasons, but one of the reasons is when you
12 use the leverage, Dave Jannetti had no ability to meet
13 meaningful margin calls. If you can't meet margin
14 calls, you can't financially handle the portfolio or
15 the strategy.

16 The strategy should never have been
17 implemented with \$11 million of margin, \$5 million of
18 mortgage leverage because Mr. Jannetti lacked outside
19 resources, and they knew it was all, you know, liquid
20 net worth, net worth. It was all documented that his
21 entire liquid net worth was at Stifel. That's what
22 their documents said.

23 Well, that means he didn't have the
24 financial ability to meet a margin call, and sure
25 enough, he didn't. So what did that do? He got

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
56

1 margin called out and liquidated.

2 What does Stifel say? Well, if you would
3 have held on, you would of been \$2 million better.
4 We'll get to the law on that, but your employee caused
5 the loss and the margin and the liquidation, and then
6 you come back and blame David Jannetti before
7 liquidating. That's Stifel's position in this case.
8 Wrap your brain around that.

9 No. 28, Mark Stevenson admitted that sending
10 the concentration letter to David Jannetti was an
11 important part of supervision, although he didn't even
12 know that it wasn't sent. At first, he thought it was
13 sent. He was sure of it.

14 29, Mark Stevenson admitted he never knew
15 that Chuck Roberts was texting under heightened
16 supervision and has imposed no disciplinary action for
17 texting violation. Mark Stevenson is not going to do
18 anything. Stifel is not going to do anything about
19 Chuck Roberts.

20 He is the goose that laid the golden egg,
21 and they're hoping he lays another golden egg in the
22 future. \$48 million of commissions, Number 1 seller
23 of structured notes. They have too much invested in
24 him. They're not going to reprimand him. They're not
25 going to hold him to account.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
57

1 It is up to arbitration panels like this one
2 to do that. Mark Stevenson said, I would hire him
3 today. That's who you're dealing with. Mr. Kennedy,
4 their expert witness that they paid an obscene amount
5 of money to, he says not eligible for hire.

6 Did you see the reaction from Justin Arpey
7 when he said not eligible for hire? He looked at
8 Wayne Hillis like he couldn't believe it. Did you see
9 that? It was incredible. An absolute pinnacle of
10 this case that Mr. Kennedy denies that Stifel did
11 anything wrong, Chuck Roberts did anything wrong.

12 I asked him the ultimate question. Would
13 you hire him? Could you hire him today? Absolutely
14 not.

15 Tab 30. Mark Stevenson admitted that Chuck
16 Roberts's text messages were prohibited. We went text
17 by text by text with the manager. Can't send it,
18 won't send it, wouldn't be allowed to send it. It's
19 all there for you to review.

20 Tab 31, Lori Lucarelli admitted that Chuck
21 Roberts violated FINRA and Stifel compliance rules
22 against projecting future returns and could not
23 supervise the text communication. All the admissions
24 are right there in Tab 31.

25 Tab 32, Lori Lucarelli admitted that Chuck

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
58

1 Roberts was not allowed to provide information
2 regarding structured notes not contained in the
3 prospectus. By the way, so did Tom Lee. So what does
4 that mean? Well, the prospectus says there's a
5 contingent coupon. What does Mr. Roberts do month
6 after month? He tells Mr. Jannetti and others that
7 it's a yield.

8 Well, that's contradicting what's in the
9 prospectus. That violates the rule in the compliance
10 manual that says you can't make a writing about an
11 upcoming IPO, which is every structured note is an
12 IPO. Tom Lee admitted it. Lori Lucarelli admitted
13 it.

14 What was Chuck Roberts's excuse? The word
15 "contingent coupon" didn't fit in the structured note
16 allocation sheet. That's what he came up with. This
17 is not serious. It's just not serious.

18 No. 33, concentration limit. Put it right
19 there for you. 10, 20, 30, no more than 30. Lori
20 Lucarelli admitted that the concentration limit was
21 for customer protection. The client should be advised
22 by Stifel of high concentration and that she never
23 sent a concentration letter to Mr. Jannetti.

24 Not only did they not send a concentration
25 letter, the evidence is clear. No discussion or

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
59

1 disclosure in the April 2021 phone call of the risk of
2 concentration. No letter sent. No disclosure in the
3 prospectus or the white paper or the client agreement
4 or any document that Mr. Hillis wants to point to on
5 behalf of Stifel of disclosing the risk of
6 concentration.

7 That's why the concentration letter was
8 unique. It's the only document that could potentially
9 disclose the risk of concentration. They made a
10 decision not to send it, despite the fact that he was
11 highly concentrated for a long period of time. And
12 then after he loses \$16 million, they called him.
13 They called him.

14 Mr. Stevenson was interested to share notes
15 about sailing because he has a house in Rhode Island,
16 in Providence, which is a very affluent area where
17 sailors sail, and he wanted to share his hobby passion
18 with Dave Jannetti. Well, that was very kind to him.
19 It was a complete failure of supervision.

20 Tab 34. Oh, and by the way, they want to
21 complain. Well, Mr. Jannetti didn't complain in that
22 phone call about what happened to him. He filed his
23 lawsuit within two months. I don't know how much
24 quicker he could have filed the case. Two months
25 later.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
60

1 Well, the one thing that I've come to learn,
2 I think, is obvious about Dave Jannetti, he doesn't
3 like confrontation. If you read the text messages,
4 you could see it. He's very careful with his words.
5 He doesn't like confrontation. But when you lose \$16
6 million in three years and you get wiped out on margin
7 calls, you need to seek justice, and this is what
8 we're doing.

9 Tab 34. When you have a mortgage that's
10 being used to invest, the rule of Stifel is you've got
11 to get manager approval. That never happened.

12 Tab 35. Lori Lucarelli admitted that from
13 June 2020 to April 2023, she was based in New York,
14 and Chuck Roberts was in Florida, and she not once
15 visited or supervised Mr. Roberts in person. So this
16 is a bad actor who's got a propensity for violating
17 Stifel and FINRA rules. You hire him on double
18 supervision.

19 You take him off heightened supervision. He
20 then goes to Florida in June 2020. He is
21 unsupervised. He's working primarily out of his
22 house, according to Tyler Connolly. Nobody's
23 supervising what he's saying on the phone or what he's
24 texting. Nobody. Nobody has visibility.

25 And even though the State of New Jersey and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
61

1 Colorado said, for this type of person, you should be
2 in the same office to supervise him, there's no one
3 supervising him. There's nobody supervising.

4 Tab 36. Again, not only is Mark Stevenson
5 taking no action against Chuck Roberts, Lori Lucarelli
6 is taking no action to retrain him, for example, on
7 texting, to retrain him on the content of what is
8 permissible to say in a written communication to a
9 client or not.

10 We will talk about punitive damages. We'll
11 show you the law. And part of the need for punitive
12 damage in this case is that, as you can see from the
13 totality of evidence, Stifel cannot be trusted to
14 supervise, discipline, or reign in Mr. Roberts.

15 And he's still -- he's still there. He's
16 still there. He's still employed. They've taken no
17 significant action other than put them on heightened
18 supervision at 2023.

19 Now, I want to turn to Tab 38. This is
20 important on damages -- on damages. We went through
21 this with Dr. McCann. I'd like to review with you in
22 closing. Okay. There's two components to damages,
23 structured products and the Solutions account.
24 There's only one Solutions account.

25 We start with structured products because

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
62

1 they were owned primarily, you could see, in the Dave
2 Jannetti account, the first one at the top. And then
3 there's other accounts, including the kids' accounts,
4 that have structured products. The capital loss,
5 meaning the loss excluding any dividends or coupons,
6 is \$16.3 million. The net out of pocket is 13.1
7 million, meaning if you include all the quarterly
8 coupons that were paid.

9 Okay. So what did we do? We did two things
10 for the panel. Benefit of the bargain damages. So
11 recall that text message from Mr. Roberts? You will
12 make 12.25 percent, 13 percent if you cherry pick. We
13 didn't even use the 13 percent. We used the lower
14 number.

15 Giving David Jannetti the benefit of the
16 12.25 percent that Mr. Roberts represented in writing
17 that he would receive, the damages, meaning had he
18 been invested and achieved the 12.25 percent return,
19 is \$20,567,172. That's the benefit of the bargain
20 damages. And we'll show you the case law to support
21 that theory and damage model.

22 The second one that we showed you is 517.
23 517 is a Florida statute. We'll go over it. It's the
24 Investor Protection Act, and it has a formula. What
25 did you invest? You get interest on your money, less

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
63

1 any dividends, and then you get attorney's fees under
2 the statute.

3 So we did the 517 calculation, and it comes
4 out to \$21,175,600. This is the structured product
5 damages sheet.

6 Second page, the Solutions account. Only
7 one Solutions account. If you accept that the
8 fiduciary duty was breached, that he deviated from the
9 philosophy statement, which Chuck Roberts admitted he
10 did, no one's disputing it, you could see that the
11 out-of-pocket loss is 3.1 million.

12 But what we did in trying to be
13 intellectually honest and correct is we said, okay,
14 there's a benchmark in Solutions, right? They have a
15 benchmark. In the philosophy statement, there's a
16 benchmark.

17 So we ran the same dollars in the benchmark
18 because the market could have gone up or down or the
19 various indices within the benchmark. That's the
20 \$2,561,622 number. Meaning, had Dave Jannetti's money
21 been invested in the benchmark, he would have lost
22 money, but he would have lost around \$500,000, not 3.1
23 million. The difference is \$2,561,622.

24 So again, it's this benchmark right here.
25 It's right into the philosophy statement. 40 percent

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
64

1 S&P, 15 percent Russell. That's the benchmark.
2 Running that money in that benchmark, this is -- he
3 would have done this much better than what he did, so
4 those are his damages.

5 Alternatively, you can also find a 517
6 violation, meaning you can look at every stock
7 purchased and give the losses back, plus interest,
8 less any dividends, and that's the \$5,328,692.

9 Panel has discretion to determine which
10 damages model it believes are more accurate and more
11 warranted. If any, it is entirely your decision, of
12 course.

13 The last page, we just do it by the
14 Claimant, the last page. Well, you could see here,
15 Dave Jannetti is, of course, the majority of the
16 damages, and then Leah Jannetti, Adam Jannetti, Sarah
17 Jannetti have structured note damages. So you can see
18 by Claimant what the damages are.

19 That is our presentation of the evidence,
20 and I want to segue now to the law. And I just want
21 to, you know, remind the panel, everything that we've
22 just shown you is in evidence. This is the evidence
23 when you are deliberating and applying law.

24 Please consider that closing binder and the
25 evidence that we've shown you. Not argument. That's

1 evidence.

2 Now, we have the cases and authority binder.
3 I'm going to spend half an hour now before we break
4 again and start going through the case law.

5 So what we've done is we've organized the
6 case law in this binder called Cases and Authorities.
7 And these are cases that we've put into our briefs,
8 and we've also put a little yellow sticky for the page
9 where the highlighted portion that we're going to
10 focus is on.

11 We're also going to put on the screen if you
12 like, but I'm going to go pretty fast. So feel free
13 to jump to the stickies or follow along on the screen.

14 So the very first part is in case there's
15 any debate about which law applies, and I don't know
16 if there is or there's not, but our contention is it's
17 Florida law. There is a Missouri choice of law
18 provision in the customer agreement. And what we're
19 showing you on Tab 1 is that that's not enforceable
20 because FINRA rules don't allow that.

21 And by the way, even if Missouri law
22 applied, 517 would also apply. You get the benefit of
23 the Blue Sky law where the client is and where the
24 broker is. You get two -- Blue Sky law, but -- and
25 that's the 517 section.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
66

1 But in any event, Florida law doesn't even
2 allow a choice of law provision that prevents you from
3 having the rights that you would have in court. And
4 that's what we're showing you. Here's the Rule 2268
5 at one. At Tab 2, we're showing you a disciplinary
6 action on the second page of Tab 2. Disciplinary
7 action against Prudential for doing this exact same
8 thing.

9 Prudential was disciplined by FINRA for
10 trying to have a choice of law provision, and FINRA
11 says, you can't do that, and we're going to punish
12 you. That Missouri law, should they choose to pursue
13 that, is invalid.

14 No. 4, if you do a choice of law analysis,
15 Florida law applies. Dave Jannetti lives in Florida.
16 Chuck Roberts was in Florida. So doing any kind of
17 analysis, and we show you that in Tab 4 at Page 5.
18 Florida courts apply the significant relationship
19 test. I don't think this is very controversial.

20 I'm going to move on to Tab 5. Tab 5 is
21 important. It's the Florida Statute 517. So what the
22 statute says, and we'll show you the damages numbers,
23 what the statute says is, it's unlawful in connection
24 with the rendering of any investment advice or in
25 connection with the offer of sale or purchase of any

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
67

1 investment to employ any device, scheme, or artifice
2 to fraud, to obtain money or property by means of any
3 untrue statement of a material fact or any omission to
4 state a material fact, and to engage in any
5 transaction practice or course of business which
6 operates or would operate under fraud or deceit upon a
7 person.

8 We believe that we've met the elements, and
9 we'll go through the elements, of 517 for the
10 structured notes and for the Solutions account.

11 So failure to disclose to Mr. Jannetti that
12 every single structured note is high risk is a
13 violation of 517. Every time he sells them a
14 structured note and you determine that is a high risk
15 structured note and Mr. Roberts either doesn't
16 understand that it's a structured note, he violates
17 the suitability rule, reasonable basis, or two, he
18 failed to disclose to Mr. Jannetti that it's high
19 risk, or he misrepresent that it's low risk by telling
20 him it's prudent, solid, very solid, super solid, I'm
21 going to invest your money, very, very safely, any of
22 those representations, it's almost like a substitution
23 for a bond, any of those would satisfy 517.

24 So every time he sells him a note and you
25 determine that it's high risk and there's admitted no

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
68

1 disclosure is high risk, no understanding, that's a
2 violation of 517.

3 Failure to disclose concentration risk is a
4 violation of 517. Use of the structured note
5 allocation. Every time he sends him a structured note
6 allocation in a violation of Stifel and FINRA rules
7 and he tells him that there's a projected yield,
8 that's a 517 violation.

9 If you believe that the structured note
10 strategy with the leverage was beyond Mr. Jannetti's
11 financial capability because of the leverage and the
12 risk of margin calls, that's a 517 violation. Any of
13 those, one of those, triggered -- all you need to find
14 is one. If you find one violation for any
15 transaction, that's a violation of 517.

16 On the Solutions side, putting a client into
17 a discretionary program that's got internal parameters
18 that are supposed to be followed to protect the client
19 and blatantly violating the risk assessment, the
20 objectives, the risk tolerance, the philosophy
21 statement, all of that is a violation of 517.

22 If you believe that to be a practice or
23 course of business, which would operate as a fraud or
24 deceit upon Mr. Jannetti, if you believe there is an
25 omission to tell Mr. Jannetti that the Solutions

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
69

1 account is not being invested according to Stifel
2 policy, any of that triggers a 517 violation.

3 If you go to the second page of the statute,
4 I'm sorry. We'll go to the next one, which is -- so
5 that's 517.301. And then what we have here at Tab 6
6 is some of the interpretation by the courts of how to
7 apply 517. So I'm going to go kind of kind of quick.

8 But in Tab 6, you have a case called
9 Gottschneur (phonetic). And in the Gottschneur case,
10 the court says it's a mere negligence standard. You
11 don't have to prove intent. You don't have to prove
12 fraud. It's a negligence standard. So we don't have
13 to prove that Mr. Roberts intentionally sought to
14 deceive Mr. Jannetti. It's a negligence standard.

15 Next case, EF Hutton case, Page 4. Bottom
16 of the page. Loss causation has never been required
17 for 517. You don't have to prove that the
18 misrepresentation caused the loss. No loss causation
19 requirement.

20 Tab 8. No loss. Tab 8 is the Waters case,
21 and it says no loss causation and no reliance in the
22 middle of the highlighted portion. Court finds that
23 there is no reason why a plaintiff proceeding under a
24 517 cause of action for violations should be required
25 to prove reliance. No reliance requirement. You just

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
70

1 have to prove the violation.

2 Once the violation is proven, meaning
3 misrepresentation, unsuitability, omission, course of
4 conduct that misled or defrauded Mr. Jannetti, any of
5 those trigger it, no loss causation, no reliance, no
6 intent requirement.

7 You go to Tab 9. Tab 9 is the Newsome case.
8 The Newsome case says, an unsuitability trading
9 violation violates 517. So if you find that Mr.
10 Roberts failed to understand the risk under the
11 reasonable basis suitability standard, that's a
12 violation of 517.

13 If you find that he made a recommendation
14 against the financial capability of Mr. Jannetti,
15 that's a 517 violation. So that's unsuitability.

16 Tab 10. The remedies. The remedies.
17 Second page, Subsection 4, in an action for damages,
18 you get the consideration paid for the security plus
19 interest, less the value of the security or
20 investment, the time it would dispose of, plus any
21 income received from the security. That's exactly
22 what Dr. McCann did in his 517 calculations.

23 And then you go to the next page, Section 6,
24 and any action brought under this section, including
25 an appeal, the court shall award reasonable attorney's

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
71

1 fees. And we are seeking reasonable attorney's fees.

2 And let me say this. I saw their
3 application for fees. It's approximately \$1.7 million
4 total with cost, 1.4 for fees, \$250,000 approximately
5 for cost. That's their application. That's their
6 desire.

7 Our application is the following. Mr.
8 Jannetti has hired my firm and Ed Rose on a
9 contingency fee basis. The contingency fee is 25
10 percent. And I'll tell you about the cost, as well.

11 The costs that we have incurred and have a
12 calculation for is \$122,772. So we are asking that
13 pursuant to 517 and applicable law that you -- if you
14 find for Mr. Jannetti under 517, that you increase his
15 award by an amount of 25 percent and specify that is
16 for attorney's fees under Section 517.211.

17 So a \$20 million award, for example, 25
18 percent would be an additional amount of \$5 million of
19 attorney's fee because the idea of 517 and the
20 attorney's fees provision is to make the client whole.
21 You're compensating for the fact that the victim had
22 to hire an attorney to prosecute the case to get the
23 recovery, and the intent is to make the client whole
24 after payment of attorney's fees.

25 So pay the attorney's fees, and the net

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
72

1 should be the damages that he incurred. That's 517.
2 And we show you at Tab 11 that you have the ability to
3 award attorney's fees under the Florida arbitration
4 code.

5 CHAIRPERSON SALIS: Excuse me. Were the
6 costs paid already to you?

7 MR. EREZ: The costs were incurred and paid.
8 Meaning, the -- and the three biggest components of
9 the costs are Mr. Heller, Dr. McCann, and the court
10 reporter. Those are the three main components of the
11 \$122,000, and they have all been paid.

12 CHAIRPERSON SALIS: Thank you.

13 MR. EREZ: Section 12. This is not really a
14 very big issue in this case, but it is something of an
15 issue. The 517 calculation that you see in the
16 damages that we went over under the structured note
17 and the Solutions account, the 517, is a no netting
18 number. What does that mean?

19 It means that under the law, when Mr.
20 Jannetti invested in structured notes in 2020 and
21 remember, he got one coupon, and then it got called,
22 then he got a coupon, it ended up called. He didn't
23 lose any money, and he made income, at first, for a
24 short time.

25 What 517 and the applicable law says is you

1 don't have to aggregate or net those profitable trades
2 against the structured notes that he held in 2021,
3 which were unprofitable. So you don't have to net.
4 In other words, none of the income that he got on the
5 structured notes that were profitable should offset
6 against the losses in the structured notes that were
7 unprofitable.

8 So when you see our -- and Dr. McCann
9 testified to this and his calculations are in
10 accordance with it, that in essence, the 517
11 structured note and Solutions damages, you can think
12 of it as losers only. It doesn't aggregate with the
13 winners.

14 So the net out of pocket on the structured
15 notes is \$13 million. The capital loss excluding
16 dividends is \$16 million. The 517 damages -- put that
17 up for a second.

18 The 17 damages for the structured note is a
19 higher number because it includes interest through the
20 time the claim was -- this case was set to begin
21 and -- put up on the screen, please. No, no, no, from
22 the closing binder, please. From the closing binder,
23 the damages -- there we go.

24 And so you could see that the 517 damages,
25 there's 26.5 million because it doesn't net. It

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
74

1 doesn't include any of the income, hypothetically,
2 from a note that Mr. Jannetti bought in 2020, that he
3 sold in 2020, and he made \$50,000 in, it doesn't
4 offset it because -- and here's why.

5 Here's the case law. Tab 12. Tab 12,
6 Florida law. So I believe this is -- yes. United
7 States Court of Appeals, Eleventh Circuit. Kane is
8 correct when he states there is no support to be found
9 under federal or Florida law for the netting theory
10 Shearson argues for.

11 What is found under both federal and Florida
12 law is the intent to have securities anti-fraud
13 provisions enforced stringently (inaudible) fraud. As
14 a district judge noted, if the methodology espoused by
15 Shearson in the brokerage firm were adopted, it could
16 serve as a license for broker/dealers to defraud their
17 customers with impunity up to the point where losses
18 equal prior gains.

19 So you have a whole body of law, which goes
20 back to a case called Lost Garden (phonetic) in the
21 Supreme Court of the United States, which we have for
22 you, as well, at Tab 14, which all explains how there
23 is no netting.

24 Let me move on to Tab 15. Tab 15, we're now
25 talking about breach of fiduciary duty. So we have

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
75

1 several counts, and we've gone over the 517 one, which
2 we believe is, you know, our most important count, but
3 they're all important.

4 And this one is breach of fiduciary duty.
5 Mr. Roberts owed a fiduciary duty to Mr. Jannetti.
6 And what this case says is that you could a fraud by
7 omission, and it says fraud also includes the
8 intentional omission of a material fact. And that's
9 what we have here.

10 Every time Mr. Roberts fails to tell Mr.
11 Jannetti this is high risk, you have a concentration
12 risk, you can -- this is beyond your financial
13 capability, these are solid, super solid, very solid,
14 all of those misrepresentations -- I'm sorry -- when
15 he fails to -- well, that's a misrepresentation. But
16 when he fails to disclose that they're high risk,
17 that's fraud by omission.

18 Let me go to No. 16. And recall that the
19 Solutions account is an advisory account. So what
20 we're showing you in 16 is that under federal law, as
21 opposed to Florida law, under the federal law, there's
22 a federal fiduciary standard. That's what the case
23 law says.

24 Please go to Page 5. And you could see that
25 is the law. So in the advisory account, there's a

1 separate analysis, which also takes into account that
2 there's -- investment binder.

3 Tab 17, this is Stifel's own compliance
4 manual. And if you look at the bottom of the page, it
5 says, as a registered adviser, the firm and its FA
6 have a fiduciary obligation to act in the best
7 interest and owe duties of loyalty and care to the
8 firm's advisory clients.

9 That's in relation to the Solutions account.
10 In relation to the brokerage account under Florida
11 law, there's also a fiduciary duty, but there's two
12 separate analyses. I want to talk about negligence,
13 Tab 18.

14 Tab 18. Talk about negligence. Negligence
15 is a deviation from the standard of care. You have
16 duty, breach, damages. Was there a deviation from the
17 standard of care? Well, in this case, what the courts
18 say and the way you need to look at it is, the courts
19 say that you should take into account the FINRA rules
20 and the compliance rules.

21 And we have at Tab 20, we have the best
22 interest obligation, which was owed to Dave Jannetti
23 in the brokerage account where a structured notes were
24 held and in the advisory account, and shall act in the
25 best interest of the retail customer at the time the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
77

1 recommendation is made without placing the financial
2 or other interest of the broker or dealer ahead of the
3 interest of the retail customer.

4 You have to decide with determining
5 negligence, for example, did Mr. Roberts place his own
6 interest ahead of Mr. Jannetti's when he sold him
7 structured notes? And the obvious answer is he did.
8 His whole methodology for -- his whole system for
9 creating notes was violative of Stifel's own policies.

10 Remember, Popel and the CEO thing, it's got
11 to be based on client input. So what he did is
12 created notes, and then he's under pressure to sell
13 them. He sells them to David Jannetti, misrepresents
14 them. He makes \$48 million in commission that year
15 when all these notes are virtually sold in 2021,
16 putting his own financial interest ahead of the
17 client.

18 And don't just take it from me. This is Mr.
19 Roberts's own words. Glad we did this round of notes
20 with the client's 15K. I'm calling and chiseling
21 every MF. That is not a broker that's putting the
22 interest of their client ahead of their own. That is
23 a disgusting and reprehensible absolute admission of
24 violation of Reg BI. This is what Reg BI is talking
25 about. Don't put your interest ahead of your clients.

1 Tab 21. This is a case that says, at Page
2 19, FINRA rules set the standard of care. So like I
3 was saying, you look at the suitability rule, you look
4 at Reg BI, you look at other FINRA rules, you're going
5 to look at compliance rules, they set the standard of
6 care.

7 So you determine was 2111 suitability
8 breached, was Reg BI breached, were the other FINRA
9 rules breached, was Stifel's compliance manual says
10 you can't project on future return breached? When you
11 determine that the FINRA rules were breached, that's
12 evidence of negligence.

13 Tab 22, Page 6 of the decision. Under
14 Florida law, internal rules and procedures governing
15 employees may be used as evidence to determine the
16 correct standard of care and a negligence cause of
17 action.

18 So again, Florida law tells you, you can
19 look at FINRA rules. You can look at Stifel rules.
20 If you find a violation of either one, that is
21 evidence of the breach of the standard of care,
22 evidence of negligence.

23 Then we have the suitability rule, Tab 23.
24 And we've seen this quite a few times, but it's worth
25 stating. It says, on the second page -- well,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
79

1 starting over there, in general, what constitutes
2 reasonable diligence will vary depending on, among
3 other things, the complexity of risks associated with
4 the security or investing strategy, and the member or
5 associated person's familiarity with the security
6 investment strategy.

7 A member or associated person's reasonable
8 diligence must provide the member or associated person
9 with an understanding of the potential risk and reward
10 associated with the recommend recommended security or
11 strategy. The lack of such an understanding of
12 recommending a security or strategy violates the
13 suitability rule.

14 That is critical in this case. Mr. Roberts,
15 as we laid out, thought he understood the risk, then
16 realized he didn't understand the risk, testified it
17 was high risk, then he said it's not high risk.

18 The reason there's so much confusion by Mr.
19 Roberts is because he didn't understand the risk, then
20 he admitted to the risk, then there was an
21 adjudication, and then him and his counsel decided we
22 can't win that case.

23 And if you determine that Mr. Roberts failed
24 to understand that these are high risk, that's a
25 violation of the suitability rule. That's proof of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
80

1 violation of 517. It's proof of negligence. It's
2 proof of breach of fiduciary duty and other claims.

3 Here's a regulatory notice at Tab 24, Page
4 14. Reasonable basis suitability. Brokers cannot
5 fulfill their suitability responsibilities to
6 customers when they fail to understand the securities
7 investment strategies they recommend. There's no
8 dispute about that.

9 Tab 25, FINRA Rule 2020. No member shall
10 affect any transaction in or induce the purchase or
11 sale of any security by means of any manipulative,
12 deceptive, or other fraudulent device or contrivance.

13 Mr. Heller testified that Mr. Roberts did
14 violate this. When you fail to disclose this high
15 risk, you violate 2020. When you represent that as
16 solid, very solid, super solid, prudent, almost like a
17 bond, you violate 2020. When you send text messages
18 that contain prohibited yield information, you violate
19 2020.

20 When you fail to disclose to clients that
21 these structured notes are high risk or that the
22 strategy is high risk or that the concentration
23 increases risk, that's a violation of 2020.

24 Fair dealing with customers, 2310-2.
25 Implicit in all member and registered representative

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
81

1 relationship with customers and others is the
2 fundamental responsibility for fair dealing. Sales
3 efforts must therefore be undertaken only on a basis
4 that can be judged as being within the ethical
5 standards of the associated rules with particular
6 emphasis on the requirement to deal fairly with the
7 public.

8 The evidence is overwhelming. Mr. Roberts
9 did not deal fairly with Mr. Jannetti or his other
10 clients.

11 2010, standard of commercial honor and
12 principle of trade. A member in the conduct of its
13 business shall observe high standards of commercial
14 honor and just and equitable principle of trade. The
15 evidence is that Mr. Roberts did not do that. He was
16 the exact opposite. He had no honor.

17 Tab 28, failed material and oral
18 presentation regarding nonconventional investments,
19 which would include structured products, must present
20 a fair and balanced picture regarding both the risks
21 and benefits of investing in these products.

22 Mr. Roberts failed horribly in this
23 obligation. He never disclosed risks. Solid, very
24 solid, super solid, prudent, almost like a bond, not
25 risky, money good. He only presented his view that we

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
82

1 showed you before that he thought the barrier would
2 always protect. That's the key to this case, that Mr.
3 Roberts created custom notes. He picked the
4 underlying. He picked the barrier level, and he
5 believed that the barrier would always protect.

6 He told Mr. Jannetti, I've never lost money
7 in a note. He doesn't deny that. He admitted it's
8 what he told him. He always believed the barrier
9 would protect. He was wrong. He didn't appreciate
10 the risk until the end of 2021.

11 And you know how you know that for a fact,
12 because he changed his conduct. He stopped selling
13 the notes. You don't change your behavior unless you
14 realize something is not consistent with your prior
15 understanding.

16 Tab 29. 2210, communications with the
17 public. Going to Section D, content standards. No
18 members may make any false, exaggerated, unwarranted,
19 promissory, or misleading statement or claim or any
20 communication. Communications may not predict or
21 project performance, imply that past performance will
22 recur, or make any exaggerated or unwarranted claim,
23 opinion, or forecast.

24 That is precisely what Mr. Roberts did with
25 Mr. Jannetti and with every client, telling them that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
83

1 there is a yield, that you're going to get a specific
2 amount of money. We even saw reports that his office
3 put out where they multiplied the yield against the
4 cost of the investment and showed an annual income.

5 And what does Stifel -- remember, those one-
6 page reports even did it in the Jannetti account.
7 Then we saw in the official reports on a compliance
8 approved report, what does Stifel say? No yield. No
9 yield. No yield.

10 When you represent to clients that you're
11 going to get a specific yield, that is a violation of
12 2210. Mr. Roberts knew he was violating it, and it
13 just sounds so attractive, right? Sir, you're going
14 to make a 12 percent yield. It's so misleading.

15 And by the way, look at all these rules.
16 Look at all these rules. This is a highly regulated
17 industry. Mr. Roberts is a fiduciary. Stifel is a
18 licensed broker/dealer that has obligations that come
19 along with getting that license.

20 All of this is designed to protect against
21 these exact violations and this exact harm. All of
22 this, Mr. Roberts completely ignored, intentionally,
23 all of these customer protection rules.

24 Tab 30. Here's the Stifel compliance rule,
25 retail communications. Retail communications must

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
84

1 meet the general standard of good taste and accuracy
2 and should fairly represent the products or services
3 included in the retail communication. Truthfulness is
4 required.

5 Second page, communications regarding
6 security subject to pending distributions are
7 generally not permitted. That's the part where Mr.
8 Lee says, you can't make a statement in writing to a
9 client that contradicts the prospectus. The
10 prospectus doesn't say 12 percent, 15 percent yield,
11 but he sent a structured note allocation monthly to
12 Mr. Jannetti that contradicts the prospectus.

13 CHAIRPERSON SALIS: I think that will be the
14 last point.

15 MR. EREZ: Okay. I'll come back after the
16 break.

17 CHAIRPERSON SALIS: Okay. Off the record.

18 (OFF THE RECORD)

19 (ON THE RECORD)

20 MR. EREZ: I'm going to go about 20 minutes
21 now. So till around 11:16.

22 CHAIRPERSON SALIS: Thank you. Whoever
23 helps me keep track.

24 MR. EREZ: Starting back up on Tab 31, this
25 is the FINRA rule that requires supervision, and we

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
85

1 believe we've proven a negligent supervision and for
2 the following reasons. One, Mark Stevenson and Lori
3 Lucarelli admitted they cannot supervise Chuck Roberts
4 without the text messages. You've got Chuck Roberts
5 receiving and sending tens of thousands of text
6 messages.

7 You've got the entire team texting, all
8 intentionally violating Stifel FINRA rules, and you've
9 got no visibility by management or anyone at Stifel to
10 those text messages. And they've admitted you can't
11 supervise them. We went over the FCC order. Stifel
12 admitted there was widespread failure to implement its
13 policies and procedures that prohibit texting.

14 Stifel, they have also admitted there that
15 it failed to implement the system reasonably expected
16 to determine whether all personnel, including
17 supervisors, were following the policies regarding
18 texting. That's a complete admission on negligent
19 supervision.

20 Ms. Lori Lucarelli knew the structured note
21 concentration was triple that of the 30 percent limit,
22 decided not to send a letter, made no communication
23 with Mr. Jannetti about the concentration risk. And
24 they both admitted, Mr. Stevenson and Ms. Lucarelli,
25 that when shown any single text message by Chuck

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
86

1 Roberts to clients, including Dave Jannetti, that
2 those communications were prohibited, and they would
3 not allow them to go -- to be sent to a client because
4 they were prohibited. All of that proves a failure to
5 supervise.

6 Did I show you the Rule 3110? Tab 32. This
7 was a rule on texting, cannot text. Chuck Roberts
8 completely violated that rule.

9 Moving on to 33. 33 is fraud. Fraud. You
10 can have fraud by omission. You could have fraud by
11 commission, representing that these are not high risk.
12 They are solid, very solid, prudent, failure to
13 disclosure for high risk. All of that is fraud,
14 failing to disclose the concentration risk. The high
15 overall risk of the portfolio with concentration,
16 instructor notes, concentration in XBI, concentration
17 in single stocks, leverage. All of that is fraud.

18 Tab 34. And one of the things to focus on
19 in Tab 33, Page 9, is when dealing with a fiduciary.
20 A defendant's knowing concealment or nondisclosure of
21 material fact may only support an action for fraud
22 whether it's a duty to disclose. Such duty arises
23 when one party has information, and the other party
24 has a right to know because of a fiduciary or other
25 relation of trust or confidence between them.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
87

1 Well, obviously, Mr. Roberts was a fiduciary
2 for all accounts. And when he fails to disclose
3 information, he's obligated to disclose and has a
4 superior position of knowledge, that is fraud.

5 Tab 35. Breach of contract. If you look
6 at -- let's just go to 30. Let's go to 35. If you
7 look at the agreement, it says all transactions in
8 your securities account are subject to applicable law.
9 So they've incorporated by reference all applicable
10 law into the contract.

11 Then if you look at the top of Page 9, it
12 says, shall be governed by Stifel general rules and
13 regulations. And so they've also incorporated by
14 reference all of their policies into the contract. So
15 a violation of Florida law, a violation of their
16 policies, a violation of FINRA rules also amount to a
17 violation of a breach of -- or all amount to a breach
18 of contract.

19 So I'm just going through the various counts
20 that we have so you can make an informed determination
21 about whether or not those counts have been met by the
22 Claimants, which we submit they have.

23 I want to go to 37. This is important
24 because there's a series of cases. So Stifel has
25 spent a lot of time focused on the disclosures and the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
88

1 prospectus, the disclosures in the white paper or in a
2 client agreement. And there's a body of law on this
3 issue, and it starts at Tab 37.

4 Members are advised -- this is FINRA --
5 members are advised that the prospectus and sales
6 material of fund include disclosures on many matters.
7 Oral representations by sales personnel that
8 contradict the disclosures in the prospectus or sale
9 literature may nullify the effect of the written
10 disclosures and make the member liable for rule
11 violations and civil damage to the customers that
12 result from such representations.

13 Exactly what happened here. You can't tell
14 someone not risky, almost like a bond, solid, very
15 solid, super solid, and then say, well, I gave you a
16 prospectus and -- or tell them to have a yield and
17 give them a prospectus that says otherwise and say,
18 hey, I gave you a prospectus. You should have known
19 better.

20 FINRA rules, FINRA interpretations, SEC
21 rules, SEC interpretation, case law, all of it rejects
22 that premise that Stifel has been advancing throughout
23 this case.

24 Tab 38, firms offering bonds and bond funds,
25 substitute structure notes should provide investors

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
89

1 with any prospectus and other disclosure material.

2 I'm just going to skip forward. However, NSD reminds
3 firms that simply providing prospectus does not cure
4 unfair or unbound sales or promotion material whether
5 prepared by the firm or the issuer.

6 And I asked their experts, and I asked Mr.
7 Heller. Everyone agrees. You can't make a
8 misrepresentation or omission or unsuitable
9 recommendation and then cure it by sending a
10 disclosure document.

11 39. Let me skip to 40 actually. 40 is an
12 SEC -- SEC material. I'm sorry. FINRA material on
13 Page 12. The SEC has held that in the enforcement
14 context, a registered representative may be found in
15 violation of NASD's rules and the federal securities
16 laws for failure to disclose risk to customers, even
17 though such risks may have been discussed in a
18 prospectus delivered to the customer.

19 Go to 41. At the expense of -- and this is
20 the SEC release. At the expense of restating the
21 obvious, we emphasize that compliance with these
22 requirements for delivery of prospectus or offering
23 circular does not, however, license broker dealers or
24 their salesman, Mr. Roberts, to indulge in false or
25 fanciful oral representations to their customers.

1 Last sentence, those who sell securities by
2 means of representations inconsistent with it do so at
3 their own peril.

4 Tab 43, same idea. SEC. Klein's delivery
5 of a prospectus to Towser does not excuse his failure
6 to inform her fully of the risks of the investment
7 package he proposed.

8 So telling someone verbally or omitting
9 information and then giving a disclosure document
10 doesn't cure anything. As we saw in Stifel's own
11 compliance manual, that Mr. Kennedy said that he
12 favored very highly, the bottom of the page said, it
13 is the FA's obligation to educate the client about the
14 risks.

15 And what is amazing here is we've
16 established what Mr. Roberts believed. We've
17 established it. Not high risk, solid, very solid, not
18 risky, almost like a bond, money good.

19 And now Stifel wants you to hold Mr.
20 Jannetti to a higher standard than Chuck Roberts. Mr.
21 Jannetti should know better than Chuck Roberts.
22 Obviously, that's not acceptable, not under the law in
23 our country.

24 The courts have addressed this issue at No.
25 46, Page 5. On the other hand, where the information

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
91

1 is provided after the fraudulently induced purchase
2 occurs, such closures cannot be used to cure the
3 alleged prior fraud. Those are the cases.

4 Let's talk about damages. Case law on
5 damages at 47, Page 11. In tort actions, the goal is
6 to restore the injured party to position it would have
7 been in had the wrong not been committed.

8 Then it goes into saying, most cases, the
9 measure of damages, which will accomplish its goal
10 provided by the out of pocket. However, in some
11 cases, the measure of damages before by that rule
12 proved inadequate to address those later cases --
13 latter cases in which the claim is for fraud, what has
14 been described as a flexibilities theory has been
15 developed.

16 The flexibility theory permits the court,
17 the panel to use either the out of pocket or the
18 benefit of the bargain rule. Benefit of the bargain
19 here, we provided you with an alternative to 517.

20 Benefit of the bargain on the structured
21 notes, and we put it right in those pages in the
22 closing binder. Had Mr. Jannetti gotten the 12.25
23 percent that Mr. Roberts represented, we gave you
24 those damages, for the Solutions account, benefit of
25 the bargain, right here, the benchmark. We gave you

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
92

1 those damages. Case law supports that exact remedy.

2 Tab 49. FINRA arbitrator guide puts benefit
3 of the bargain right into the guide, 67. The benefit
4 of the bargain measure seeks to give the Claimant the
5 expected value of the investment. This is exactly
6 what FINRA contemplated. Give Mr. Jannetti the
7 benefit of what Mr. Roberts represented about the
8 structured notes, 12.25, even set up the 13 if you
9 cherry pick, but even using a lower number.

10 And then the benchmark, there is no better
11 benefit of the bargain than what the benchmark is.
12 Now we acknowledge the benchmark lost \$500,000. We
13 acknowledge that. Meaning, some money would have been
14 lost, but \$2.5 million better than how Mr. Roberts
15 actually managed the account.

16 I want to turn to 52, punitive damages.
17 Now, punitive damages is critical in this case, and
18 let me tell you why. This is the third case we're
19 litigating to a trial involving Chuck Roberts. And
20 I've shown to this panel, even after the
21 adjudications, they have taken no additional action to
22 retrain or discipline Mr. Roberts.

23 Stifel will not do anything to discipline
24 him for the conduct that they know that he's engaged
25 in over the course of years, damaging and harming 20

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
93

1 clients that have come forward, two adjudications.
2 They will not do anything.

3 And as we sit here right now, Mr. Hillis is
4 about to embark on a three-hour lecture on why his
5 client did nothing wrong, and that they have no
6 liability, and that not only did they wipe out Mr.
7 Jannetti, who came from nothing. He came from a very
8 humble beginning, worked by himself, moved to New York
9 as a young man, didn't have enough money to rent a --
10 to buy a suit, had to rent a suit, made it on his own.

11 Nobody gave him a hand up. He made it on
12 his own, and he sold his business in a one-time
13 liquidity event. And he gives that money to Mr.
14 Roberts. And Mr. Roberts, in three years, wiped out
15 \$16 million, not only of his money, his children's
16 money, and he has to sell assets to support himself.

17 In the text messages, I have no more money.
18 He testified, I have to sell assets. What will they
19 say? He's an investor. He's rich. It shouldn't
20 matter. They wiped out all of his liquid net worth,
21 all of it. Six-plus margin calls. Stifel knows no
22 bounds. They will not take any action.

23 It is up to this panel to send a message to
24 Stifel. If you employ people like Chuck Roberts and
25 you don't discipline them and you don't retrain them

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
94

1 and you don't take action to supervise or make sure
2 that investors aren't harmed, that FINRA panels under
3 Florida law, empowered by FINRA rules, empowered by
4 Florida law, which we'll go over right now, will send
5 a message to Stifel.

6 Send the message. This is not acceptable.
7 And here it is, right in the arbitrator guide.
8 Arbitrators may consider punitive damages. There's no
9 debate about that.

10 53, Florida law, Florida Statute 768.737, we
11 have two arbitrators and two lawyers and an
12 experienced arbitrator. Where punitive damages are
13 available as a remedy in the arbitration proceeding --
14 when an award of punitive damages made in an
15 arbitration proceeding, the arbitrator renders the
16 award must issue a written opinion setting forth the
17 conduct which gave rise to the award and how the
18 arbitrator applied the standards in 768.72 to such
19 conduct.

20 So when you render an award, if you render
21 an award for punitive damages, Florida law requires
22 that you make findings of fact sufficient to support
23 your award of punitive damages.

24 So when you're deliberating and should you
25 reach the conclusion that punitive damages are

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
95

1 warranted, you have to include findings of fact. You
2 know, the panel finds that Mr. Roberts engaged in --
3 and I'll show you what the standard is right now. I
4 don't want to put words in your mouth. I don't want
5 to invade the province of the panel, but here it is.

6 768.72, Tab 54. In any civil action, no
7 claim for punitive damages shall be permitted unless
8 there's a reasonable showing by evidence in the record
9 or proffered by the Claimant, which would provide a
10 reasonable basis.

11 A defendant may be held liable for punitive
12 damages only if the trier of fact, that's the three of
13 you, based on clear and convincing evidence, that's
14 the standard, finds that the defendant, that's Stifel,
15 was personally guilty through Chuck Roberts of
16 intentional misconduct or gross negligence.

17 Intentional misconduct, the defendant had
18 actual knowledge of the wrongfulness of the conduct
19 and high probability that injury or damage to the
20 Claimant would result and despite that knowledge,
21 intentionally pursued the course of conduct. We have
22 that here.

23 Gross negligence means the defendant's
24 conduct through Chuck Roberts was so reckless or
25 wanting in care that constituted a conscious disregard

1 or indifference to the life, safety, or rights of
2 persons exposed to such conduct.

3 In the case of an employer, Stifel,
4 principal corporation, other legal entity, punitive
5 damage may be imposed for the conduct of an employee,
6 Chuck Roberts, if the conduct of the employee, Chuck
7 Roberts, meets the criteria below.

8 The employer, Stifel, or other legal entity
9 actively and knowingly participated. Two, the
10 officers, directors, or managers, Chuck Roberts, Lori
11 Lucarelli, condone, ratified, or consented to the
12 conduct.

13 Or No. 3, the employer, Stifel, or other
14 legal entity engaged in conduct that constitute gross
15 negligence. Did Lori Lucarelli and Mark Stevenson and
16 Stifel engage in gross negligence that contributed to
17 the loss, damages, or injuries suffered by the
18 Claimant? Yes, they did.

19 They failed to supervise. They admitted it
20 in the SEC settlement. They said they failed to have
21 a system of supervision in place to carry out its
22 obligation to monitor text messages.

23 What is the case law? Tab 55, Page 8.
24 Mastrobuono. Oddly enough, this is one of the cases
25 that Mr. Stevenson was involved in. If you look at

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
97

1 Mr. Stevenson's CRD, he is the manager of record in
2 this Mastrobuono case that went up to the Supreme
3 Court of the United States -- Mark Stevenson.

4 And the Supreme Court made a determination
5 because there was a challenge to whether or not the
6 arbitrators had the authority to award punitive
7 damages, and they said, yes, they did.

8 The NASD's code of arbitration procedure
9 indicates that arbitrators may award damages and other
10 relief. NASD code of arbitration, while not a clear
11 authorization of punitive damages, this provision
12 appeared broad enough to at least contemplate such a
13 remedy.

14 Thus, the text of the arbitration clause
15 itself surely does not support, indeed, it contradicts
16 conclusion that the parties agreed to foreclose claim
17 for punitive damages. Arbitrators are allowed to
18 award punitive damages in cases just like this.

19 Tab 56, Page 7. A breach of fiduciary duty
20 under Florida law will support an award for punitive
21 damages. So there's a special line of pages that deal
22 with fiduciary duties. And if you have a fiduciary
23 duty and a breach of that duty, that supports an award
24 for punitive damages.

25 57. I'm sorry. Let's go to 58. Florida

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
98

1 statute 768.73. This tells you the amount that you
2 can award under Florida law, and here it is. Punitive
3 damages may not exceed three times the amount of
4 compensatory damages awarded to the Claimant. That is
5 the general standard. You're allowed to go up to 3X
6 the compensatory damages.

7 So if you find that the damages are 25
8 million, you can award up to three times the
9 compensatory amount as punitive damages. Remember,
10 this is an \$11.7 billion market cap company. The
11 message has to be meaningful for it to get the message
12 that hiring and retaining people like Chuck Roberts
13 that caused damage to investors is not acceptable.

14 You can also go up to four times where the
15 fact finder determines the wrongful conduct proven
16 under this section was motivated solely by
17 unreasonable financial gain and determines that the
18 unreasonably dangerous nature of the conduct together
19 with the high likelihood of injury resulted from the
20 conduct was actually known by the managing agent,
21 director, officer, or other person responsible for
22 making policy decisions, it may award an amount of
23 punitive damages not to exceed greater of four times
24 the amount of compensatory damages.

25 So three times is the standard, four times

1 under certain circumstances.

2 Tab 59, Page 8. In determining the amount
3 of punitive damages or exemplary damages to pecuniary
4 circumstances of defendant are material, it must be
5 considered since an amount would be pecuniary
6 punishment to a man of small means would not
7 necessarily serve as punishment to one of larger
8 means.

9 It follows that imputed damage of the award
10 is insufficient to serve as punishment, it cannot
11 serve as warning to deter him from committing similar
12 offense or engaging in similar conduct in the future.

13 The message must be calibrated to be
14 meaningful to Stifel. Their market cap today, today,
15 11.7 billion. In evidence in this case, are their
16 profits in 2023 and 2024. This is a hugely profitable
17 company with an 11.7 billion market cap.

18 The punitive damage award, should you find
19 one, under Florida law, must be calibrated to send a
20 message or a warning to the defendant. And we give
21 you that information at Tab 60. 2024 third quarter
22 results. Stifel reported net revenues of 1.2 billion
23 for the three months ended September 2024. Through
24 the first quarters of 2024, net revenue was up 13
25 percent to a record \$3.6 billion.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
100

1 That's who the defendant is. That's who
2 Stifel is.

3 And I want to draw your attention to this,
4 Tab 64, Page 26. And just finishing up here, there
5 was an argument that had Mr. Jannetti held on to those
6 structured notes, his loss would have been diminished
7 by \$2 million. I'm sure everyone recalls that.

8 Here's the law in Florida on that issue. In
9 determining whether a victim's conduct was reasonable,
10 Mr. Jannetti, a court must consider the necessity for
11 decision making that was thrust upon him by the
12 defendant, Stifel, and judgments made at times of
13 crisis, margin calls, and are subject to human error
14 and should allow the injured party, Dave Jannetti, a
15 wide latitude in determining how best to deal with the
16 situation.

17 You can't put an investor in a precarious,
18 dangerous situation where they're going to have to
19 margin call liquidate their assets and then complain
20 that the investor would have had fewer losses had he
21 not had a margin call that you caused. That's Florida
22 law. That is Florida law.

23 I'll turn it over to Mr. Hillis on behalf of
24 Stifel in just a moment, but I'll end with this. It
25 is imperative that arbitration panels like yours apply

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
101

1 the facts of the law and send a message where you deem
2 it appropriate to Stifel that the kind of conduct that
3 has been proven here, where brokers call their clients
4 MFs and openly say that they're chiseling their
5 clients and engage in intentional wrongdoing, and
6 brokerage firms knowingly hire bad actors to maximize
7 their profit and disregard the risks to their clients,
8 that those persons, those companies realize that there
9 are ramifications for that kind of behavior.

10 And only when you send the message in the
11 form of punitive damages, above and beyond, a warning
12 as the court put it, a warning, will that type of
13 conduct be diminished. Thank you for your attention.

14 CHAIRPERSON SALIS: Okay. Are you ready to
15 go, Mr. Hillis?

16 MR. HILLIS: We're ready.

17 CHAIRPERSON SALIS: Okay.

18 MR. HILLIS: So we have a few things that
19 we'll pass out as well. We have on the tape. No. 1
20 is what we call our closing binder. It has the
21 PowerPoint that I intend to use. It also has behind
22 the second tab, the blow ups and demonstratives that
23 we've used (inaudible).

24 We're going to put the PowerPoint on the
25 screen. So I'm welcome to hand out the notebooks if

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
102

1 you'd rather view it in paper. Or --

2 CHAIRPERSON SALIS: I want to take them all.

3 MR. HILLIS: So what I was going to say is I
4 can hand them out. You can have them in front of you,
5 if you want to view it in paper, or I can put them
6 here and you can have them when you leave, either
7 way --

8 CHAIRPERSON SALIS: Put them here or I'll
9 forget them.

10 MR. HILLIS: No problem.

11 CHAIRPERSON SALIS: Some one of you or two
12 of you or three of you need to carry this to my car.

13 MR. HILLIS: So we have that closing binder.
14 We also have a case authorities notebook with an index
15 and some of the key cases that we've cited. I don't
16 plan to go through that case notebook. We also
17 include another copy of our hearing brief.

18 And of course, we've already uploaded our
19 hearing brief and everything cited in our hearing
20 brief to the portal. But those are some of our key
21 cases. They're in there alphabetically, so you can
22 look at the index. If there's a case you want to look
23 at, you can pull it up alphabetically.

24 We also have everything on a flash drive
25 that we'll pass out. It does have a password which

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
103

1 we'll provide to you. We also went ahead and put all
2 of the hearing transcript on that flash drive. We'll
3 still upload that to the portal, but we'll provide
4 those to you, as well.

5 And just for my planning purposes, Madam
6 Chairman, it's 11:22. Will we go to 12:22 or are we
7 going to break?

8 CHAIRPERSON SALIS: We're going to break at
9 noon.

10 MR. HILLIS: We're going to break at noon.
11 Okay. Thank you. Okay. May I proceed?

12 CHAIRPERSON SALIS: Yes, please.

13 RESPONDENT'S CLOSING STATEMENT

14 MR. HILLIS: Thank you. Great. Well, on
15 behalf of Stifel, we'd also like to thank the panel
16 for serving in this case, for the attention that
17 you've given the case. I've watched you very
18 carefully; you have paid very close attention. You've
19 taken a lot of notes. You've taken your role very
20 seriously, and Stifel appreciates it very much.

21 What I'd like to do is try to give you the
22 other side of the story. We've had 18 days of
23 hearings. It's a lot of testimony, a lot of exhibits,
24 and it's impossible for anybody to remember all of
25 that. So what I'm going to do is try to show you some

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
104

1 of the key documents, key text messages from Mr.
2 Jannetti, key testimony from Mr. Jannetti and others,
3 because it's impossible to remember all that.

4 And most of what I'm going to be showing
5 you, the other side didn't mention, didn't show you at
6 all.

7 So I told you in opening that this is the
8 case about a smart, sophisticated, successful
9 businessman and an experienced and aggressive, detail-
10 oriented investor who refuses to take any
11 responsibility for his investment and financial
12 decisions that he alone made and controlled and who is
13 simply trying to shift to Stifel market risks that I'm
14 going to show you.

15 He understood that he willingly chose to
16 assume in order to chase higher yields and higher
17 returns from strategies that were suitable for him,
18 that had performed well for years up until 2022, that
19 he loved when they were performing well, that suffered
20 losses in 2022 solely caused by a broad market
21 collapse driven by the Federal Reserve rapidly and
22 dramatically increasing interest rates to combat the
23 worst inflation in 40 years and strategies that have
24 performed well since 2022.

25 And that's exactly what the evidence has

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
105

1 proven. The evidence has proven that Mr. Jannetti was
2 an aggressive investor, chasing higher potential
3 yields and higher potential returns. He wasn't
4 looking for a safe, conservative, diversified
5 portfolio that would preserve his principal like he
6 claimed in this hearing.

7 And let's look at three text messages that
8 prove the point. This is a text message from
9 September from Mr. Jannetti to Mr. Roberts. I just
10 freed up about \$2.5 of bullshit investments that I'm
11 going to move over soon. U.S. Trust just left crappy
12 investments wither on the vine, not being attentive to
13 unproductive positions.

14 Now, Mr. Jannetti testified about this
15 account, and he testified similarly about the Merrill
16 Lynch account, diversified, conservative. And I'll
17 show you the holdings in those accounts later. That's
18 what his experience had been. He didn't want it.

19 Let's go to the next slide. This is a text
20 a few weeks later from him to Mr. Roberts. By the
21 way, it's our anniversary, and you didn't even send
22 flowers. One year up, 30 percent, plus not a miss on
23 notes. One million dollar start to \$34 million today.

24 Go to the next text. This is a few weeks
25 later. Hey, Eric. Eric is his hard dollar lender.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
106

1 This is the guy who does the hard dollar lending with.
2 He's introducing him to Chuck Roberts. He says, you
3 both made me money. Chuck manages a bunch of my money
4 and a significant amount of money for friends and
5 family. I'm not complaining about his 35 percent
6 return last year.

7 These three texts show you what Mr. Jannetti
8 wanted, why he consolidated his assets at Stifel.
9 Because he was chasing higher returns, higher yield.
10 He didn't want bullshit, crappy, and unproductive
11 diversified conservative portfolios like he had at
12 Merrill Lynch and at U.S. Trust. He was chasing
13 substantially higher returns, primarily to fund his
14 private investments away from Stifel.

15 He wanted investments that could potentially
16 generate 30 to 35 percent return. And given his
17 education, business experience, investment experience,
18 his own text messages, do we really think he thought
19 he could get 30 to 35 percent return in one year from
20 a safe, conservative strategy that would preserve his
21 principal? Of course, he understood the risks he was
22 taking to get 30 to 35 percent in one year.

23 The evidence has proven that Stifel and Mr.
24 Roberts disclosed the risks of structured notes,
25 orally and in writing, repeatedly. There's

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
107

1 overwhelming evidence of it, and I'll review that with
2 you later.

3 The evidence has proven that Mr. Jannetti
4 understood the risks he was taking investing in
5 structured notes. His spreadsheet, which I'll show
6 you later, his own text messages, and his testimony
7 prove it.

8 When safe, low risk investments like
9 treasuries are yielding less than 2 percent, when
10 investment grade bonds, which he held, were yielding 3
11 to 4 percent, an investor with his experience
12 understands that a structured note potentially
13 offering a 15 percent yield has considerably more
14 risk.

15 Pull up Respondent's 148, Page 11. This is
16 a chart that Mr. Ekdahl testified yesterday. And on
17 cross, Mr. Erez ripped him a new one for including in
18 this chart a comparison of the structured notes with
19 three -- the S&P 500 index dividend yield, the BBAL,
20 and the bankrate.com U.S. two-year CD national average
21 because those had such low risk, and he ripped him for
22 comparing in this chart to the structured note.

23 But that's the whole point of this chart.
24 That's the whole point. If Mr. Jannetti had wanted
25 safe, conservative investments that would preserve

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
108

1 principal that pay less than less than 2 percent, then
2 those are the types of investments he would have been
3 investing in.

4 No, he was offered structured notes with a
5 potential yield of 13, 14, 15 percent and wants you to
6 believe that he thought it was the same level of risk.
7 His testimony under oath. I didn't think there was
8 any risk to my principal. That's what he expects you
9 to believe.

10 He clearly understood the risks of investing
11 in structured notes. When you strip away all the
12 granular details that he attempts to overcomplicate
13 these notes, what is the market risk of these notes?
14 The market risk of a structured note is the risk that
15 the underlying drops significantly in value.

16 The risk that an ETF or an individual stock
17 drops significantly in value, drops below the barrier.
18 It's stock market risk. It's as simple as that. Mr.
19 Heller admitted that that was the market risk of a
20 structured note, the risk that the underlying drops in
21 price.

22 And investing in a structured note carries
23 no more market risk than investing directly in the
24 underlying. You invest in a structured note linked to
25 a particular stock, you're taking no more risk than if

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
109

1 you invested in that particular stock directly. It's
2 stock market risk, and it's actually less risk until
3 you reach the barrier.

4 And of course, as Mr. Ekdahl shows, you can
5 certainly do better than the underlying, particularly
6 if you've gotten dividends. But you're taking no more
7 market risk than you do investing in the underlying.
8 If you understand the risk that a stock ETF or an
9 individual stock can go down, then you understand the
10 risk of investing in a structured note.

11 And the risk that an ETF or a stock can drop
12 in price, can drop significantly in price, is a risk
13 that even a novice investor, which Mr. Jannetti
14 clearly is not, understands.

15 And his experience losing \$3 million of the
16 4 million he received from the sale of his first
17 company in ICG Communications stock and other
18 technology stocks that he selected and bought taught
19 him that lesson.

20 And Mr. Heller conceded, and I'll show you
21 this testimony, that he had no doubt in his mind that
22 Mr. Jannetti understood the risk that the underlyings
23 can drop significantly.

24 Yet Mr. Jannetti is here asking you to give
25 him 20-plus million dollars in damages, claiming that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
110

1 he didn't understand the risk that an ETF or an
2 individual stock like Dynatrace can drop significantly
3 and can drop below the barrier. It's simply not
4 credible.

5 And there's another important point to
6 remember. There's a big difference between a broker
7 expressing an opinion or belief that something is a
8 good investment or an investment that they think will
9 perform well, a big difference between that and a risk
10 disclosure.

11 And the Claimants in this case, in our view,
12 seriously conflate these concepts. A broker
13 recommends an investment only if he reasonably
14 believes it's a good investment, an investment that he
15 thinks will perform well for his client. Otherwise,
16 he or she wouldn't recommend it.

17 A customer certainly doesn't expect their
18 broker to recommend something that he doesn't or she
19 doesn't think is a good investment. That's just
20 common sense.

21 But so when Mr. Roberts expressed an opinion
22 that structured notes were solid or super solid or
23 things just like that, he's expressing his opinion
24 that he thinks these are good investments. It's not a
25 guarantee. It's not a risk disclosure. It's not, as

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
111

1 they argue, a disclosure that these investments have
2 no risk to principal. It's not a statement of low
3 risk or no risk.

4 It's a statement of opinion that Mr. Roberts
5 thought these were good investments. But he
6 understood the risk of what could happen. He
7 explained that to Mr. Jannetti. Stifel explained it
8 in written documentation, and Mr. Jannetti understood
9 the risk of what could happen.

10 His spreadsheet and his text messages, which
11 I'm going to walk you through, prove it. The evidence
12 has proven that the structured notes were suitable for
13 the Claimants.

14 Now, suitability, as you've heard, has two
15 components, reasonable basis and customer specific.
16 Let me talk a little bit about reasonable basis. This
17 is not a product case. Structured notes are clearly
18 suitable for retail investors. That's been the
19 evidence from the experts that it really hasn't been
20 rebutted.

21 They've been offered to retail investors for
22 many years. Thousands of structured notes are issued
23 every year, billions of dollars' worth. They're
24 issued by most of the major financial institutions,
25 recommended and sold to retail clients by most of the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
112

1 major broker dealers, all of whom have concluded that
2 structured notes meet the reasonable basis to
3 suitability test, suitable for some retail investors.

4 Even Mr. Heller admitted that he was not
5 here to opine that structured notes were not suitable
6 for retail investors.

7 Now, Mr. McCann, who's a pure academic, no
8 real-world experience at all, never seen a product
9 that he liked, he clearly didn't like structured
10 notes.

11 And he tried to mislead this panel when he
12 testified with no backup, zero backup, no analysis, no
13 data, not even a handwritten note on a whiteboard that
14 every single one of the notes Mr. Jannetti bought had
15 an expected negative return, and it was known at the
16 time it was recommended. Blatant attempt to mislead
17 you.

18 And they ripped Mr. Ekdahl for writing notes
19 on a board when Mr. McCann sprung that opinion on us
20 with zero notice, zero documentation, no data
21 whatsoever. It's a double standard. Mr. Ekdahl, who
22 does have real-world experience and is a structured
23 products expert, completely rebutted Mr. McCann's
24 opinions.

25 He ran the Monte Carlo simulations. 10,000

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
113

1 simulations on the Palantir note. 79 percent of the
2 time, it's projected to have a positive return. But
3 to believe Mr. McCann, you have to believe that all
4 these issuers, all these broker/dealers have been
5 duping the entire world of retail investors and the
6 regulators for years. It's just pure nonsense.

7 The SEC and FINRA have not barred the sale
8 of structured notes to retail clients. There's no
9 evidence of any regulatory action against issuers,
10 broker/dealers, to prohibit the sale of structured
11 notes.

12 On the contrary, FINRA provides training on
13 the sale of structured notes to retail investors. So
14 this is not a product case.

15 Now, the Claimants make three reasonable
16 basis suitability arguments. First, they argue that
17 Mr. Roberts didn't understand structured notes. They
18 have not proven that. The evidence has proven that
19 Mr. Roberts clearly understood the structured notes.
20 He was trained on them at Morgan Stanley, trained on
21 them at Stifel, including FINRA trading.

22 He sold them since 2014. He sold many
23 hundreds of them, read countless prospectuses, works
24 with the structured note desk virtually every month to
25 structure these notes. It's clear from his testimony

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
114

1 that he understands these products.

2 Their argument that he didn't is based
3 solely on a handful of text messages, mainly to other
4 people, out of hundreds of clients who bought
5 structured notes. A handful of clients, out of
6 hundreds who bought them, with no context whatsoever
7 to suggest that those few text messages sent to a
8 handful of clients somehow encapsulates everything Mr.
9 Roberts knows about structured notes is absurd.

10 Their second argument is that he stopped
11 offering single stock notes and XBI notes in January
12 of 2022. That is irrelevant. It's in the nature of a
13 subsequent remedial measure. If we were in court, it
14 wouldn't even come in.

15 The fact that he decides in January of 2022
16 to no longer offer new and different structured notes,
17 which each one is a completely separate security,
18 linked to single stocks -- what single stocks? We
19 don't know -- or XBI.

20 But the fact that he makes that decision
21 based on a different risk reward analysis caused by a
22 dramatically different market doesn't change the
23 reasonableness of his recommendation of separate
24 structured notes offered six months earlier.

25 Suitability is determined at the time of the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
115

1 recommendation, not months later. And there's no
2 question that Mr. Jannetti knew that Mr. Roberts
3 stopped offering single stock notes and notes linked
4 to XBI because Mr. Roberts continued sending him the
5 menu of notes each month in 2022, and they didn't
6 include any single stock notes, and they didn't
7 include any XBI.

8 So he knew that Mr. Roberts was no longer
9 offering those types of notes. Now he didn't buy any
10 notes in 2022. But he under -- he saw those menus
11 that Mr. Roberts continued to send, and those types of
12 notes were not there.

13 The third argument is this argument somehow
14 Mr. Roberts did something wrong with the way in which
15 he customized and hedged his notes. The evidence in
16 the case is that the sole reason for customizing the
17 notes was to get better terms for the clients. Mr.
18 Roberts could've sold the calendar notes. He would've
19 gotten paid the same thing.

20 He did it to get better terms for the
21 client. Their argument is he customizes based on his
22 view, not the client's view. Well, that's just
23 factually wrong because the evidence is that Mr.
24 Roberts talks to his clients all the time. Many
25 clients have signed on to the strategy. He talks to

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
116

1 them all the time.

2 He understands what they want. He
3 understands their view of the markets. He understands
4 that custom notes will be attractive to them based
5 upon their view and their knowledge of the market.
6 There's no requirement, no rule. They didn't show you
7 one -- that the only way you can do a customized note
8 is when a client calls you up and says, hey, I'd like
9 to buy a structured note because I've got this
10 particular view.

11 They haven't shown you anything to support
12 that argument. Mr. Roberts knows his clients. He
13 talks to them all the time. He knows what they want.
14 He knows what their objectives are. He knows what
15 they're interested in. And he customizes this note
16 based upon his knowledge of his own client.

17 There is absolutely nothing wrong with the
18 manner in which he did it. Mr. Lee testified to that.
19 And Ms. Popel testified to that. Nothing wrong with
20 that process.

21 The evidence has proven that the notes were
22 suitable for the Claimants given their investment
23 profile. The test is, did Mr. Roberts have a
24 reasonable basis at the time he recommended the notes
25 to believe that they were suitable for Mr. Jannetti,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
117

1 not based on hindsight, not based on how they
2 ultimately performed, that's not relevant, at the time
3 he makes the recommendation.

4 And the evidence has proven that he did have
5 a reason to believe they were suitable based upon Mr.
6 Jannetti's age, his education, his business
7 experience, his aggressive investment objectives and
8 risk tolerance, which I'll tell you, his net worth of
9 \$70 million, but most important because it's what Mr.
10 Jannetti wanted, which he made clear repeatedly.

11 Concentration. With respect to
12 concentration, the evidence has proven beyond any
13 dispute that Mr. Jannetti is responsible for it. Mr.
14 Roberts didn't recommend that he concentrate his
15 accounts only in structured notes. Mr. Roberts
16 recommended a diversified portfolio multiple times,
17 and Mr. Jannetti rejected it every single time.

18 I'll go over that evidence in a little
19 while. Mr. Roberts didn't recommend that he
20 concentrate his structured note holdings and notes
21 with the highest potential yield, such as single stock
22 notes. Mr. Roberts recommended a menu of notes every
23 month, broad-based index notes like the Dow, NASDAQ,
24 vector notes.

25 And starting in June of '21, only because

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
118

1 Mr. Jannetti was unhappy with the yields and expressed
2 the desire for notes that had higher yields, he
3 started offering -- including in his menu single stock
4 notes with relatively small allocations to the single
5 stock notes.

6 Mr. Jannetti rejected Mr. Roberts's
7 recommended menu every time. He chose to concentrate
8 in notes with the highest potential yield, and he
9 decided how much to invest every time. And starting
10 in June of '21, he is the one that chose to
11 concentrate his investments in single stock notes,
12 rejecting the menu and picking the one or two single
13 stock notes with the highest yields.

14 He knew those notes had the highest risk
15 and, in turn, the highest potential coupon because he
16 knew they were tied to underlyings that were more
17 volatile. I'll show you the text message as the man
18 follows the VIX, which is the volatility index. He
19 understands the relationship between volatility and
20 the potential yield and the underlying.

21 And a note with a 15 percent contingent
22 coupon when really safe investments are paying 2 to 3
23 percent and a barrier of 40 percent tells you that the
24 underlying is volatile. If it wasn't, why would you
25 need a 40 percent barrier to protect you?

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
119

1 Mr. Jannetti knew that diversification
2 reduces risk, and he knew that concentrating increases
3 risk. He decided to concentrate in structured notes.
4 He decided to concentrate in structured notes with the
5 highest potential yield that he knew had the higher
6 risks.

7 Just like he decided to take half the cash
8 from the sale of his first company and invest it all
9 in risky technology stocks. Just like he decided to
10 concentrate \$3.5 million in Braven, a one speculative,
11 illiquid private investment that he bought because his
12 former close friend told him he would double his money
13 in three months.

14 That tells you what he's looking for. He
15 ain't looking for safety. He's not looking to
16 preserve principal. He's looking to double a \$3.5
17 million investment in three months. Just like he
18 decided to concentrate \$7 million in one spec real
19 estate development project with Mr. Caine (phonetic).

20 And let me just make one other point. He
21 didn't need Mark Stevenson or Lori Lucarelli to tell
22 him over the phone or in a letter that his accounts
23 were concentrated in structured notes. He knew it.
24 He testified to it. He testified that he knew it, and
25 he knew the risks he was taking by concentrating, and

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
120

1 he continued to ask for more and more structured
2 notes.

3 Leverage. The evidence has proven that Mr.
4 Jannetti is very experienced with debt and lending, as
5 a borrower and a lender. He testified he brought up
6 the idea to Mr. Roberts of getting a mortgage and
7 investing the proceeds to earn -- simple arbitrage is
8 what he said. He asked to use margin before he had
9 even opened a margin account at Stifel.

10 And of course, he had used the very same
11 strategy at U.S. Trust, a \$3.5 million line of credit
12 there, secured by his brokerage account, which he used
13 to invest in private deals.

14 The evidence is proven he drove the use of
15 margin, not Mr. Roberts, to fund his withdrawals, to
16 fund his private investments, just like he did at U.S.
17 Trust with the \$3.75 million credit.

18 Margin calls. The evidence has proven that
19 Mr. Jannetti is solely responsible for the margin
20 calls in 2022, and his decision to sell notes to meet
21 those margin calls. He chose to overcommit himself to
22 outside private investment. Mr. Roberts didn't
23 recommend that he commit \$7 million to a spec real
24 estate deal with Mr. Caine.

25 He didn't recommend that he take \$3 million

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
121

1 on margin and invest in Braven. Mr. Roberts didn't
2 recommend that he take \$2.1 million on margin for a
3 down payment on an \$11.5 million investment property
4 in Sunset Harbor after his accounts had dropped \$10
5 million.

6 Mr. Jannetti chose to withdraw \$12 million
7 from his Stifel account between March of '20 and the
8 end of '22, much of that on margin to fund these
9 outside investments. He chose to withdraw over \$6
10 million from the account in 2022 alone when the
11 accounts were losing millions and he was getting
12 margin calls.

13 He chose to withdraw over 3.5 million after
14 receiving the first margin call, between then and
15 January of 2023. All those withdrawals led directly
16 to the margin calls he received in 2022 and
17 (inaudible).

18 Imagine how this account would have
19 performed had the \$12 million not been withdrawn. I
20 would offer to you, he wouldn't have gotten any margin
21 calls. It's the \$12 million he withdrew from the
22 account. It's the \$6 million he withdrew in 2022,
23 that it led to or at least exacerbated the margin
24 calls.

25 Mr. Roberts's structured note and stock

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
122

1 strategies performed well for years before 2022.
2 They've performed well since. He had one bad year,
3 2022, as I said, due to the dramatic rise in inflation
4 and Federal Reserve interest rates. The S&P in 2022
5 went down over 19 percent. The Russell 2000 went down
6 over 21 percent, and the NASDAQ dropped over 33
7 percent. All of that happened in one year.

8 That's not Mr. Roberts's fault. Every long
9 term investment strategy has a bad year. No strategy
10 goes up every year. And unfortunately, that's the
11 market risk that caused Mr. Jannetti significant
12 losses in 2022. So it's a case about one bad year in
13 the market, not a bad strategy.

14 Now, Stifel and Roberts, Mr. Roberts, we
15 obviously regret that Mr. Jannetti suffered these
16 losses. We don't want to see any client suffer market
17 losses. It's not good for Mr. Jannetti, obviously.
18 It's not good for any client. It's not good for
19 Stifel's business. It's not good for Mr. Roberts's
20 business.

21 Our job is to make people money, not have
22 them lose money in the market. But we didn't cause
23 it. We didn't cause that market downturn, which is
24 the sole reason these structured notes went down in
25 value. The sole reason. Downturns in the markets

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
123

1 happen. This one was severe, unfortunately.

2 But that's a risk an investor accepts and
3 agrees to assume. No firm, no FA can guarantee the
4 markets. No firm, no FA can guarantee the performance
5 of any particular strategy or particular investment.
6 That's a fundamental precept of investing.

7 So much so that it's incorporated into the
8 client agreement, which is the contract between Stifel
9 and Mr. Jannetti. And it's on the very first page of
10 the account agreement. There are risks in investment.
11 The performance of your investments cannot be
12 guaranteed by Stifel.

13 If you choose to invest in products that are
14 not insured by the U.S. government, there is a risk to
15 your principal. If you're not comfortable with this
16 risk, you should not purchase such investments through
17 Stifel. Some investments are riskier than others.
18 Before making any investment, you should understand
19 the investment product and the associated risks.

20 This is fundamental to investing. The
21 investor has to understand the risks, which he did,
22 and if he genuinely chooses to assume those risks,
23 that is on the investor.

24 He's not entitled to recover simply because
25 the market declined and he lost money, simply because

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
124

1 he lost a lot of money. Simply because Mr. Roberts's
2 recommendations did not perform like he and Mr.
3 Jannetti thought they would and hoped they would.
4 That's not enough.

5 We acknowledge that the loss is large in
6 this case, but that's not enough for him to recover.
7 Yet Mr. Jannetti, this experienced businessman,
8 professional investor, comes in here and asks you for
9 all his money back. A do-over, a market guarantee, an
10 insurance policy, make Stifel the guarantor of the
11 markets, taking zero responsibility for anything.

12 In his world, he gets to -- he could decide
13 to concentrate his account in structured notes, reject
14 Mr. Roberts's multiple recommendations to diversify
15 the portfolio with other investments.

16 He can reject Mr. Roberts's diversified
17 structured note menu every month, choose to cherry
18 pick the structured notes with the highest potential
19 yield, those linked to the ETFs and stocks that he
20 knows have higher volatility, he can receive a
21 structured investments disclosure, a white paper, a
22 portfolio review, and over 40 preliminary and 40 final
23 prospectuses, all of which disclose the risks in
24 detail, and if you believe him, which I don't, choose
25 to be completely irresponsible and not read any of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
125

1 that. Not even look at it.

2 He can keep a live spreadsheet of every
3 single structured note with a live feed so he can
4 track the market risk of each note every single day.
5 So that on a daily basis, he can look at whether the
6 price of the underlying is above or has dropped below
7 the barrier, which he knows determines whether coupons
8 will be paid and how much principal is returned at
9 maturity.

10 And he uses it to track how far below the
11 starting price the underlying has dropped. I'll show
12 you that spreadsheet in a little bit. He could decide
13 to reinvest proceeds from structured notes that are
14 called into new structured notes, knowing full well
15 that Stifel and Mr. Roberts will receive an additional
16 1.75 percent commission on each note sold. He knew
17 that.

18 This experienced professional lender and
19 borrower can decide to use leverage to enhance his
20 returns, knowing full well the risk of the doing so,
21 netting him almost \$3 million in structured note
22 coupons above the margin interest that he paid.

23 He can commit millions of dollars to private
24 investments away from Stifel, withdraw over \$12
25 million from his accounts, much of it on margin, to

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
126

1 fund those investments, which presumably have been
2 profitable, and those decisions leading directly to or
3 at least exacerbating his margin calls, he can praise
4 Mr. Roberts when the strategies were performing well,
5 praising for earning 30 to 35 percent in one year,
6 making me six figures in one day, making me \$500,000
7 in less than three months with only \$1 million
8 invested most of that time, knowing full well the
9 risks he is assuming to get such outsides returns.

10 He could decide to put \$6 million in a
11 structured note linked to Dynatrace, admitting that he
12 had trepidation when he did so, which is proof
13 positive he understood the risk. He can decide over
14 the course of two months to invest \$5.5 million in two
15 structured notes linked to Palantir, then invest
16 \$600,000 directly in Palantir stock, 400 of that in
17 two unsolicited trades that he initiates for a total
18 of \$6.1 million invested in Palantir-related
19 securities, knowing all that time that the price of
20 Palantir is dropping by 33.5 percent.

21 He can follow his accounts, his structured
22 notes, his stocks on a daily basis, knowing exactly
23 what he holds, how concentrated his accounts are in
24 structured notes, that stocks have been bought in the
25 Solutions account, that the Solutions account holds

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
127

1 only growth stocks, how his investments and accounts
2 are performing, he could do that.

3 And for over a year starting in late 2021,
4 he can watch those investments drop in value by
5 millions of dollars, sell securities to meet margin
6 calls, incur millions of dollars in realized losses.
7 And during that time, he never accuses Mr. Roberts of
8 anything throughout 2022. Never accuses Mr. Roberts
9 of having misrepresented the risks or anything else.

10 You would think that someone who thought and
11 was led to believe that the notes had a guaranteed 12
12 to 15 percent yield and no risk to principal would
13 have accused Mr. Roberts of misleading him in 2022
14 when he saw the exact opposite. Never did. Never
15 accused him of that. Never accused him of
16 recommending unsuitable investments.

17 And we're supposed to believe that the guy
18 you watched on cross, as combative as he was with me,
19 felt sorry for Mr. Roberts, and that's why he didn't
20 accuse him of any wrongdoing? In his world, after all
21 of that, he demands that you give him all of his money
22 back plus a huge return as if none of that ever
23 happened.

24 Just completely absolve him of any
25 responsibility at all. Not a result supported by the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
128

1 law or the facts, and it would be unfair and unjust.
2 The law and federal arbitration are intended to
3 provide a means for innocent victims to recover
4 compensation for losses they didn't cause, losses
5 caused by the wrongdoing of the Respondent.

6 The law and FINRA arbitration are not
7 intended to give a professional investor like Mr.
8 Jannetti, who understands the risks, who knowingly
9 takes those risks chasing higher returns, who follows
10 his accounts and holdings closely, and knows exactly
11 where he stands at all time, and whose losses were
12 caused by his own conduct and decisions and the market
13 risks he chose to take a market guarantee or do over.

14 That's not what the law and federal
15 arbitration is about. And that's why we have legal
16 principles and defenses like comparative fault. In
17 Florida, you find that Mr. Jannetti was at fault,
18 negligent, then you must reduce any recovery on his
19 negligence claims by the amount of losses caused by
20 his own fault.

21 And if you find that his fault was more than
22 50 percent responsible for the losses, then you must
23 award him nothing on his negligence claims. That's
24 why we have reasonable and justifiable reliance, which
25 is an element of the fraud claims and the 517 claim,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
129

1 which I'll come back to later.

2 Now, Mr. Erez doesn't like that law, but the
3 law is that it's not enough for him to prove an
4 alleged misrepresentation or an omission. He has to
5 prove that he relied on it and that he was reasonable
6 in relying upon it. And you're not reasonable in
7 relying upon alleged omissions when the documents to
8 disclose those facts are sitting right in front of
9 you.

10 That's why we have assumption of the risk.
11 The law doesn't compensate one for losses caused by a
12 risk that they knowingly assume. That's why we have
13 ratification.

14 An investor can't sit by knowing exactly
15 what's happening in the account, exactly how
16 concentrated the account is in structured notes,
17 exactly how many structured notes he has that are
18 linked to XBI. He knew it. Exactly how leveraged the
19 account is, that only stocks have been bought in the
20 Solutions account, accept all that, and then complain
21 only after incurring losses. The law does not allow
22 you to do that.

23 CHAIRPERSON SALIS: Mr. Hillis, are you okay
24 completing that after 1:00?

25 MR. HILLIS: I'm glad to take a break now.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
130

1 CHAIRPERSON SALIS: Okay. Good.

2 MR. HILLIS: Thank you.

3 (OFF THE RECORD)

4 (ON THE RECORD)

5 MR. EREZ: I would like to just state the
6 obvious, which is, on the current trajectory, we're
7 not going to be done at 4:00.

8 CHAIRPERSON SALIS: My first recommendation
9 was that we finish on Zoom if it's not finished. I
10 don't want to stay late. I don't have a babysitter
11 for my dog.

12 MR. EREZ: I'm not in control of this
13 process, but either we recalibrate the time and cut it
14 down on both sides or we stay till 5:00. I mean, it's
15 your decision, but --

16 MR. HILLIS: Shorter breaks a little bit --

17 MR. EREZ: Shorter breaks.

18 MR. HILLIS: I'm want to get through this.
19 I'm going to try to go through it as quickly as I
20 possibly can.

21 CHAIRPERSON SALIS: You both have very good
22 at that.

23 MR. HILLIS: But we have, you know, I want
24 to make sure I've got time. I mean, obviously, he's
25 got some rebuttal time. So you know, we're 30 minutes

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
131

1 away, and it's 4:00. I don't know. But let's just
2 get going, and I'll try to get through my pieces.

3 CHAIRPERSON SALIS: Let's see where we are
4 at the next break, but I do have two house cleaning
5 things. I just double checked about the withdrawal of
6 the (inaudible) request. Is that with or without
7 prejudice? Because it's before October, so you would
8 have an opportunity to file again if you want to.

9 MR. HILLIS: I'll have to admit I'm -- I'll
10 have to look at the rule on that. My understanding
11 was that in a case where the broker's not named and
12 the firm asks for it, that's the opportunity. But
13 given that we're withdrawing it, I don't know enough.

14 CHAIRPERSON SALIS: It might have to be a
15 separate file.

16 MR. HILLIS: I don't know enough. Yeah.

17 CHAIRPERSON SALIS: Okay.

18 MR. HILLIS: I'll have to look.

19 CHAIRPERSON SALIS: Yes, please look into
20 that. No, don't apologize. So I'm learning about
21 this, too. I never had that happen.

22 The second thing is, just so you know, the
23 ruling is not going to be immediate because one of our
24 members is going out of the country on a trip.

25 MR. HILLIS: Understand.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
132

1 CHAIRPERSON SALIS: So but we are scheduling
2 several times to convene and discuss the case.

3 MR. HILLIS: Understand.

4 CHAIRPERSON SALIS: All right. Please
5 proceed.

6 MR. HILLIS: All right. It's 1:10.

7 Now, what's the Claimants' primary strategy
8 to taking attention off of his own responsibility and
9 fault in this case, and that is to try to demonize Mr.
10 Roberts. That's been their primary strategy from Day
11 1.

12 Screw him as a bad actor, convince you he's
13 got bad business character, so you will conclude that
14 he acted in conformity with it in this case and acted
15 wrongfully in this case and that he shouldn't be
16 believed.

17 They focus on customer complaint many years
18 before Stifel even hired him. We objected to that
19 prior bad acts evidence in our motion in limine, and
20 that was denied, which I respect.

21 But we made the argument because prior bad
22 acts evidence offered to prove that a defendant acted
23 in conformity with it should not be admitted. And
24 that is the exact argument that he made in his closing
25 argument, that Mr. Roberts shouldn't have been hired

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
133

1 because of those prior complaints and that he acted in
2 conformity with it in this case. And that's why that
3 evidence is so prejudicial unfairly and should not
4 come in.

5 They bring up a FINRA settlement many years
6 before Stifel hired Mr. Roberts. They bring up the
7 fact that 2 states out of 30 required heightened
8 supervision as a condition of transferring his
9 registration to Stifel, even though 28 states didn't
10 require it, even though both Colorado and New Jersey
11 both approved lifting that heightened supervision in
12 2018, well over a year before Mr. Jannetti opened his
13 first account.

14 Even though there were no new customer
15 complaints filed or regulatory issues on Mr. Roberts's
16 record from 2010, when the FINRA AWC was entered,
17 until the end of 2021; that's 11 years with that.

18 And the pending complaints, all of which
19 came in after Mr. Jannetti's account was closed, most
20 of which are filed by Claimants' counsel, those
21 pending complaints are completely irrelevant. They
22 were filed after Mr. Jannetti's account left, after
23 all of the alleged conduct in this case. They're
24 totally irrelevant.

25 And of course, they bring up the fact that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
134

1 Mr. Roberts texted. They're literally obsessed with
2 this texting, and I'm not minimizing what he did.
3 Federal rules and Stifel policies clearly prohibit
4 texting with clients on a personal device about
5 business.

6 He admitted it was wrong. He shouldn't have
7 done it. He takes responsibility for having done it.
8 He doesn't make any excuses for it, but it's the
9 regulator's job to address that violation.

10 The SEC has addressed Stifel's role with
11 respect to texting, including every issue on texting,
12 including Mr. Roberts, and fined Stifel \$35 million.
13 It has paid that price for its role with respect to
14 texting.

15 And yes, they made findings in that SEC
16 settlement about supervision of texting, not
17 supervision of Mr. Roberts, not supervision of
18 anything other than texting. The FCC fined Stifel and
19 made those findings just like it has done to over 70
20 other different investment firms making exactly the
21 same findings.

22 And FINRA is currently investigating Mr.
23 Roberts, as the panel heard, and it will address the
24 issue of texting with him as it has with other
25 registered representatives.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
135

1 But clearly, this has been an industry
2 issue. It doesn't make Mr. Roberts's texting right.
3 It doesn't excuse it. We're not saying because
4 everybody speeds, it's okay for him to speed. That's
5 not our argument.

6 But it doesn't make him unique. It doesn't
7 make him a bad actor or a rogue broker when this is
8 clearly an industry issue. And it doesn't make Stifel
9 a rogue firm, either.

10 Most important, the mere fact that Mr.
11 Roberts texted in violation of federal rules and
12 Stifel policies does not give Mr. Jannetti any legal
13 claim. The law is clear he has no private cause of
14 action for violating a federal rule or a Stifel
15 policy.

16 That's the in re January 2021 Short Squeeze
17 Trading litigation and the De La Torre case, both
18 Florida cases that we cite in our briefs. And you
19 can't backdoor a claim for violation of a private -- a
20 federal rule or a Stifel policy through a negligence
21 or breach of contract claim. And the case law is
22 cited in our brief.

23 The fact that Mr. Roberts texted does not
24 support any fraud-related claim. It didn't breach any
25 duty owed to Mr. Jannetti. It didn't breach any

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
136

1 contract with Mr. Jannetti. And the mere fact that
2 Mr. Roberts texted, particularly with other clients,
3 didn't cause Mr. Jannetti any harm at all.

4 Why is this important? How much time did
5 the Claimant spend in this case on the fact that Mr.
6 Roberts used the word "yield" in text messages and
7 sent structured note allocation sheets to Mr. Jannetti
8 by text and WhatsApp with a column that had the
9 heading "yield"?

10 Now, regardless of whether sending that is a
11 violation of Stifel policy or not, it doesn't support
12 any legal claim. Why?

13 Because the evidence, which I'm going to
14 review later, proves beyond any doubt whatsoever that
15 whether Mr. Roberts used the word "yield" or "coupon"
16 or "interest", Mr. Jannetti knew that it was
17 contingent, contingent on the performance of the
18 underlying asset, contingent on the price of that
19 asset staying above the barrier.

20 He testified to that. He knew the yield did
21 not mean the final effective yield, which you can only
22 know at the two year maturity of the note. So Mr.
23 Roberts use of the word "yield" in a text message did
24 not, as a matter of law, mislead -- or fact mislead
25 Mr. Jannetti in any way.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
137

1 One more point on texting. Claimant spent a
2 lot of time on Chuck Roberts's text with other
3 customers. We objected to that -- respect to ruling
4 that you allowed it.

5 Claimants' counsel was laser focused on the
6 words in the text messages. Short phrases and a
7 handful of text messages with a handful of clients out
8 of the hundreds of structured notes. No context
9 whatsoever. FINRA says in its communications rule
10 that context is important.

11 Go to the next one. Rule 2210. No member
12 may omit any material fact or qualification if the
13 omission in light of the context of material presented
14 would cause the communication to be misleading.

15 Members must ensure the statements are clear
16 and not misleading within the context in which they
17 are made. Members must consider the nature of the
18 audience to which the communication will be directed
19 and provide details and explanations appropriate to
20 the audience.

21 So FINRA says context is important. Mr.
22 Heller, Claimants' expert, agrees. I asked him, when
23 assessing communications under the federal rule, FINRA
24 says context is important, right? Yes. And you agree
25 with that? And he said yes.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
138

1 You don't have any context for text messages
2 with other clients. You don't know who these clients
3 are. You don't know what their background is. You
4 don't know what their investment experience is. You
5 don't know whether they bought structured notes before
6 that particular text message or not, how many
7 structured notes they bought, whether they've looked
8 at the prospectuses for any of those notes. You have
9 no context whatsoever.

10 Such as the context you have in this case
11 about Mr. Jannetti's spreadsheet and his understanding
12 of exactly what the yield is, a contingent coupon
13 dependent upon the performance of the underlying.

14 You have that context in this case that
15 explains that the text messages to him with the word
16 "yield" aren't misleading in any way. You don't have
17 any of that context for these other clients.

18 And I hope you caught the Claimants' pure
19 hypocrisy on this issue, right? Counsel repeatedly
20 boxed in Mr. Roberts and other witnesses into the
21 literal words in the text messages. Did everything he
22 could to prevent Mr. Roberts from providing the
23 context that's necessary for you to assess those
24 communications, like phone calls or prior
25 communications with the client.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
139

1 But when Mr. Jannetti is presented with a
2 text on cross that's devastating to his claims, he
3 says you can't take the text messages at face value.
4 You have to look at the phone calls. Let's look at
5 some examples.

6 First of all, counsel argued, I mean, he
7 objected. All the phone calls are being completely
8 glossed over. This is when I'm crossing Mr. Jannetti
9 on his own text messages. And note that Mr. Erez in
10 his case, he didn't show you a single one of Mr.
11 Jannetti's text messages.

12 So I'm crossing him on text messages, and
13 he's objects. I mean, all the phone calls are being
14 completely glossed over that are taking place before
15 any of those texts. So it's not accurate to say, and
16 then you did this and then you did that. The tens of
17 minutes of phone calls on every round are being
18 omitted.

19 Look at what Mr. Jannetti did. Time and
20 time again, difficult for me to answer because we've
21 had so many conversations, and so I really can't tell
22 you. I mean, when you look at these texts, they don't
23 include the support for the phone calls. So it's very
24 difficult for me to give an answer on these.

25 But again, I could have been responding to a

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
140

1 phone call. So I'm just -- do I do it on my own? I
2 might have. Did he call me? Did he mention it? Just
3 trying to provide the proper context.

4 Another text I show him. He says, can we
5 read the phone calls at the same time to maybe draw
6 clarity?

7 Next one, Brittany. I'd like to -- I wish
8 we could review the phone records. Well, again, we're
9 completely ignoring phone calls. He says if it's an
10 involved conversation, then texting, I think, is
11 you're going to build calluses on your fingers. So if
12 they're more substantive or involves more discussion,
13 then you have to have a phone call.

14 So when it's Mr. Roberts's texts, you can
15 ignore the context and just focus on the words on the
16 page. But when it's Mr. Jannetti's texts, you can't
17 take those at face value. You need context. Another
18 double standard at play.

19 But again, I'm not minimizing the importance
20 of complying with federal rules and Stifel policies on
21 texting, but it's important to remember your role.
22 You do not sit as a regulator. You're not a FINRA
23 disciplinary panel. You're not a regulatory
24 enforcement panel. This is not an enforcement action.

25 Your role is not to sanction Stifel or Mr.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
141

1 Roberts for texting. That's already been done to
2 Stifel. Your job is to decide the Claimants' legal
3 claims. Have they proven all of the elements of their
4 claims and have we proven affirmative defenses for
5 their claims in whole or in part.

6 Now one of the ways you do that, according
7 to the arbitrator's guide, is by assessing the
8 credibility of the witnesses. We've heard a lot of
9 attacks on the credibility of our witnesses and on me
10 personally for unethical conduct in the case. I'm
11 going to try to ignore that.

12 Let's look at Mr. Jannetti's credibility
13 because his credibility is at issue, as well. And the
14 evidence in this case has proven that he's not
15 credible. His testimony is not credible. His story
16 is not credible. In fact, in many cases, it's
17 downright dishonest, and I'm going to show you
18 numerous examples.

19 The first is this claim that Mr. Roberts
20 somehow groomed Mr. Jannetti.

21 CHAIRPERSON SALIS: Groomed?

22 MR. HILLIS: You know, grooming is defined
23 as befriending a vulnerable adult for the purpose of
24 abuse or manipulation. Any claim that that is what
25 Mr. Roberts did is just false. It's an insult to our

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
142

1 intelligence. Mr. Jannetti is not vulnerable. He's a
2 grown man.

3 You saw him on cross, very combative, rude.
4 He knows how to take care of himself, and evidence has
5 proven that Mr. Jannetti actively pursued friendship
6 with Mr. Roberts as much or more than Mr. Roberts did.
7 Invited him to go on his boat. Invited him to dinner.
8 Invited Mr. Roberts and his son to play ping pong.

9 Let's look at some examples. These are all
10 texts from Mr. Jannetti. Thanks for the classy text,
11 but even more so for the photo. You and Claudia are
12 welcome anytime. You always make any group better.

13 The feeling is mutual. Just think. About a
14 year from now, you will have another little person at
15 your family table. So cool. Please give Claudia a
16 hug from me and have a wonderful day with your growing
17 family.

18 December of '20, just wanted you to know I
19 appreciate our friendship and your attentiveness to my
20 financial well-being. Good thing you made me six
21 figures today. Otherwise, our friendship is in
22 question if this doesn't happen on a daily basis.

23 Wow. That wasn't preeminent impression, I
24 should say. Merry Christmas, Chuck. You're working
25 today, right? This is on Christmas Day. He sends him

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
143

1 a text message. And this next part is interesting.
2 Can you please carve out or carve three to four hours
3 out of your family day to discuss structured notes?

4 Now, that's a joke sent on Christmas Day,
5 but what's the reference to three to four hours to
6 discuss structured notes? Could that be an indication
7 of how much he and Mr. Roberts discussed structured
8 notes? Seriously, thanks for our friendship. It's
9 one of the best things to come out of 2020.

10 Thanks very much for such a fun celebration
11 of Claudia's birthday and the New Year. Can you
12 believe next year you'll be adding another baby girl
13 Roberts to the mix?

14 Saw this one earlier. I won't go over it
15 again. Good idea, Chuck. Sorry to vent earlier.
16 It's just been -- this is just October of 2022, after
17 he's incurred a lot of losses. And Mr. Jannetti says
18 then, you're a great guy, and I entirely appreciate
19 your friendship.

20 The second example showing Mr. Jannetti's
21 lack of credibility is he tried to mislead this panel
22 about his level of investment experience, knowledge,
23 and sophistication. In other words, he tried to play
24 dumb, to dumb himself down, the Forrest Gump routine.
25 It's an insult to our intelligence.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
144

1 What do we know about him? A college
2 graduate with a degree in finance. Now, he, of
3 course, had to tell you he didn't make good grades.
4 Why is Mr. Jannetti trying to -- telling you that he
5 didn't make good grades? Why does he want you to
6 think he isn't smart?

7 Business experience, started and owned and
8 sold two private companies. AT Conference, the second
9 one. He built it into one of the leading providers of
10 conference call web conference and services in the
11 country. Ranked multiple times by Inc. Magazine as
12 one of the fastest growing private technology
13 companies.

14 He led four separate asset acquisitions of
15 other companies, sold his company in 2016 for \$48
16 million plus a \$3 million earn out. Investment
17 experience. He's had accounts with Charles Schwab
18 since at least 1996. He had accounts with Merrill
19 Lynch and U.S. Trust.

20 In his brokerage accounts, he invested in
21 large -- this is all before Mr. Roberts -- large cap
22 stocks, mid cap stocks, international stocks, emerging
23 market stocks, technology, communications companies,
24 30 percent of his Merrill account was in those,
25 exchange traded funds or ETFs, corporate bonds, both

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
145

1 investment grade and below investment grade, municipal
2 bonds, investment grade and below investment grade,
3 preferred stocks, closed end mutual funds, government
4 securities, other mutual funds, including high yield
5 bond funds, alternative investments, and a hedge fund
6 strategies fund.

7 In addition, he used 3.75 million in a
8 letter of -- of a line of credit at U.S. Trust, which
9 we talked about.

10 In addition, he's invested in real estate,
11 including income producing real estate, spec real
12 estate construction and development, hard money
13 lending, typically \$800,000 per project with interest
14 rates well over 10 percent, much higher risk than
15 traditional lending, much higher.

16 He's a private lender. He invested in pro
17 funders SoFi, a pool of residential mortgages. The
18 man is investing directly in residential mortgages.
19 And of course, 4- to \$500,000 during the same time
20 he's doing business with Mr. Roberts in
21 cryptocurrency.

22 He follows the market, follows his holdings,
23 does his homework. Let's look at just a few examples.
24 Slide 26. These are all texts from him. Got to love
25 Palantir. I'm watching the investments that you're

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
146

1 making on my behalf.

2 Can you go back to the one before that? I'm
3 watching the investments that you're making on my
4 behalf, and it looks good. He sends Mr. Roberts an
5 article on Aurinia, one of the stocks that he bought
6 and one of the stocks that had a significant loss.

7 He's sending screenshots of his account,
8 online, his wealth tracker. Why does FinTech show a
9 loss? So he's paying close attention. He says, hey,
10 buddy, sorry I couldn't make your weekend, but I have
11 a couple of questions about my account. They are low
12 level. I just need to know about two transactions.
13 Can you please have someone call me? Paying close
14 attention.

15 Chuck says our stocks are ripping, my
16 friend, while you splash in the Mediterranean Sea.
17 Let me know when you're back so we can chat. David
18 Jannetti's response, I'm watching every minute. We
19 can chat in a few hours if that works for you. He's
20 in the Mediterranean. He's still following his
21 account closely.

22 Text from Mr. Jannetti, September 3rd.
23 MongoDB ripping today, December 16, 2021. Square is
24 down 33 percent since October 28. You know what
25 October 28 is? That's the day he buys the Square

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
147

1 note. I'll show you this later.

2 Mr. Roberts recommended a menu of notes,
3 which included Dynatrace and Square and a lot of
4 others. And he picks Dynatrace and Square, and he
5 sends the text messages. Square's down 33 percent
6 since October 28th.

7 Then he -- here's another one. Checking his
8 Aurinia order. Got filled at \$24.40 according to the
9 dashboard, but the daily has \$22.70. Doesn't make
10 sense. Then he realizes he's looking at the wrong
11 purchase.

12 So I could -- go to the next one That one
13 there is -- can you scroll down just a little bit?
14 Let's see the whole thing. You can't see the bottom,
15 but Mr. Jannetti says in response to the June 22 text
16 message, I watch it daily. Thanks, Chuck.

17 In spite of all that evidence about his
18 investment experience, how closely he's paying
19 attention, he's obviously paying close attention, when
20 he testified, he claimed not to understand the general
21 concept of risk reward, what investment grade means,
22 what high yield means, what a long term bond is, what
23 an ETF is.

24 In fact, he claimed he didn't know that ETF
25 stood for exchange traded fund even though he had

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
148

1 invested in ETFs, and he bought ETFs when he and Mr.
2 Roberts had their stock picking contest. He claimed
3 not to know what a start-up is even though he's had
4 two.

5 He claimed not to know how to read the
6 account statement, what speculation means, even though
7 he signed subscription documents for multiple private
8 deals acknowledging his understanding that the
9 investments were speculative, claimed not to
10 understand that margin increases risk.

11 I encourage you to read Mr. Jannetti's text
12 messages. Those are Respondent's Exhibit 128 and 129.
13 128 and 129. And I encourage you to read his emails
14 to Stifel. Exhibits -- Respondent's Exhibit 120 and
15 121.

16 And when you do that, you will see a very
17 different person from the man that he tried to portray
18 himself in this hearing. You will see a very
19 different level of investment sophistication and
20 knowledge from what you witnessed in his testimony in
21 this case.

22 He also tried to mislead this panel about
23 his investment objectives and his risk tolerance. He
24 claims under oath that he wanted safety to preserve
25 principal, that he would not have even discussed

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
149

1 investing anything in high risk.

2 That testimony is just untrue. And I'll
3 show you the evidence later that he is an aggressive
4 investor, willing to take higher risks.

5 There are numerous other examples of
6 inconsistent, untruthful, misleading testimony from
7 him, and I want to go through those now.

8 He testified, I'm not an investor. And yet
9 in the personal financial statement that he filled out
10 in his own handwriting and submitted in order to get a
11 mortgage from Stifel Bank, he lists his occupation as
12 investor.

13 Go to the next one. He falsely denied
14 understanding risk reward. When he was first asked
15 about it, am I correct that you had a general
16 understanding of risk reward, Mr. Jannetti? No. That
17 was his answer.

18 Okay. I asked him again, if you understood
19 that you were going to get an investment with a
20 potential yield of 12 to 15 percent, that you were
21 going to have -- you're going to be taking more risks
22 than an investment paying you 6 percent. Common
23 sense. 6 percent has less risk than something with 12
24 to 15 percent. His answer, no.

25 Then he testifies later, inconsistently,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
150

1 meaning the more potential reward, the more risk you
2 have to take. You said you understood that, right?
3 Now he admits, yeah, I do, and I think my adviser
4 should know even more than me.

5 Next slide. He falsely denied watching
6 Kramer. I asked him, did you watch CNBC, Kramer? No,
7 I probably watched it here in the waiting room more
8 than I did. Didn't watch it to any degree, and yet he
9 sends a text to Mr. Roberts, January 31, 2022, telling
10 Mr. Roberts that the CEO of Silvergate, which is one
11 of his largest holdings, is coming on Kramer if he's
12 interested.

13 So the guy doesn't watch Kramer, but he just
14 so happens to see that the CEO of one of his largest
15 holdings is coming up on CNBC. Doesn't make any
16 sense.

17 He falsely denied knowing what in the round
18 means. He sends a text message to Mr. Roberts.
19 They're talking about an investment in GLBE. And Mr.
20 Jannetti asked, at the bottom, are you personally
21 invested? If so, in the round or in the public
22 sector?

23 And then I asked him on cross what he meant
24 by in the round. I don't know what the round means.
25 Go to the next one. He falsely denied knowing about

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
151

1 the wash sale rule.

2 I asked him, are you familiar with what the
3 rules, the IRS rules, say about when you can buy back
4 stock after you make a sale for tax purposes? No.
5 And yet look at the text he sends to Mr. Roberts.
6 FYI, per our conversation regarding crypto, they do
7 not apply to the wash sale rule. No need to wait 30
8 days. Cryptos are treated like capital gains on real
9 property when sold.

10 He knows exactly what the cash sale -- what
11 the cash -- that -- what that rule is. He falsely
12 denied seeing the fee, the 1.75 percent fee, in the
13 prospectus. I asked him, you knew the 1.75 percent
14 fee from looking at the prospectus; isn't that true?
15 No.

16 Then I showed him the email that he sends to
17 Mr. Roberts and his team. He says, also, I believe
18 there's no additional fee to the notes above and
19 beyond the amount stated in the prospectus, correct?
20 And then I asked him about that. So you did see the
21 fee in the prospectus, did you not? And his answer
22 then was, well, perhaps.

23 He falsely denied understanding what the
24 principal barrier was. I asked him, what was your
25 understanding then, Mr. Jannetti, of the principal

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
152

1 barrier? I'm not sure. I'm not sure because I wasn't
2 keeping a chart for it.

3 But then he testified. I asked him, Mr.
4 Roberts told you that the notes had a coupon and a
5 principal barrier; did he not? And he said a
6 principal, well, principal, yes. A downside barrier,
7 yes. Then I showed him the email below, April 27th,
8 2020, right after he buys the first notes, can you
9 please confirm that the coupon and principal barrier
10 rates are the same?

11 So he does -- he claims not to know what the
12 principal barrier is, but here he is sending an email
13 to Mr. Roberts asking exactly what the number for the
14 principal barrier is.

15 Next slide. He says he lied in the
16 subscription documents. So he's had to sign
17 subscription documents for these alternatives, these
18 private investments.

19 And in there, he represents -- he signs that
20 he represents that he's read the offering memorandum,
21 that he understands the investment is speculative, and
22 that he has the sufficient knowledge and expertise to
23 be able to evaluate that investment. That's what he
24 represents in writing in order to induce the general
25 partner to accept his investment.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
153

1 But when he testified, he admitted that he
2 lied. You read the off- -- go back. You read the
3 offering memorandum before you signed it? No. Well,
4 you signed this saying that you did. Your testimony
5 is that you actually did not read it? That's right.

6 Goes on to say the subscriber confirms that
7 he has sufficient knowledge and expertise to be able
8 to evaluate the merits and risk of investing in the
9 fund. And that was true at the time you signed it,
10 correct? No. So here he is admitting that he lies in
11 written documents to induce a general partner to
12 accept his investment.

13 Next slide. He falsely claimed to take
14 responsibility for his investment in Braven. Mr. Erez
15 asked him whether he took responsibility for the
16 Braven investment. He says yes.

17 But then on cross, we find out, he doesn't
18 take responsibility for it at all because he hired a
19 lawyer, sent a demand letter, accusing Mr. Marino of
20 having misled him about that investment and demanded
21 all of his money back. So he didn't take
22 responsibility for it.

23 He also falsely claimed that he just blindly
24 trusts and relied upon Mr. Roberts. And I'm going to
25 show you some examples of that testimony. He did this

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
154

1 many, many times. It was his common fallback.

2 It was important for me to trust my adviser.
3 Did you not review the prospectuses because they were
4 long? No, I didn't -- I did not. The reason I didn't
5 is because I trusted my conversation with Mr. Roberts.
6 I didn't really give them much regard because I relied
7 on Chuck.

8 You never took the advice in the email to
9 read the prospectus? No, I took the advice of my
10 broker. You never took the advice to read the
11 prospectus, did you? I thought it was unnecessary to
12 read the prospectus if my broker was honest with me.
13 I assume that he was.

14 It was my understanding that the principal
15 was not at risk, so there was no need to look at the
16 prospectus because I believed Mr. Roberts. I wanted
17 to pay my bills. I don't care about -- I just wanted
18 to listen to someone and pay my bills. I don't care
19 about learning about them as much.

20 Plenty of testimony that directly conflicts
21 with all that. Did you -- and most of this is on
22 direct. Did you look at your accounts online? Yes.
23 Why? Because I was very interested in it. I found it
24 fascinating. Were the accounts meaningful? Yes.

25 To me, that sound very archaic, and I wanted

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
155

1 to be on top of my finances more. This is a product.
2 I put a lot of faith in him. I'm putting a lot of
3 money into the product per his doing, and I want to
4 have more of a current, an online idea what's
5 happening in real time, so I created a spreadsheet
6 with this exact information.

7 Why such a lengthy call after receiving a
8 structured note allocation? Because I wanted an
9 explanation, and I was clueless in terms of what these
10 were, and I wanted him to talk to me about them. Were
11 you asking questions? Well, I'm concerned about my
12 investments. I want to understand my investments, not
13 just blindly relying upon Mr. Roberts.

14 Were you interested in obtaining information
15 from Stifel about the investments that you ultimately
16 invested \$64 million in? Yes, of course. Were you
17 interested in the information that you were
18 communicating about the investments you had? Of
19 course. Was this account important to you in your
20 mind? Very.

21 Here he is asking Mr. Connolly to see
22 prospectuses, preliminary prospectuses, for the notes
23 that are being offered at that point. He's not just
24 relying upon Mr. Roberts. This man is doing his own
25 homework. He's reading the material.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
156

1 Here he is emailing with his Merrill Lynch
2 broker, asking him questions about structured notes.
3 He's not just blindly relying upon Mr. Roberts. He's
4 asking his Merrill Lynch broker questions about
5 structured notes.

6 Go to the next one. Here's another email.
7 This one from his Merrill Lynch broker. He says, this
8 is one of the structured notes that we had spoken
9 about last Friday that you had asked me to send some
10 details to you on. And if you remember this email,
11 there was a prospectus and some -- in a brochure
12 behind it.

13 Mr. Jannetti is not just blindly relying on
14 his broker. He's not just trusting his broker. He's
15 digging into the details. He's doing his own
16 homework. He's reading. He wants the details.

17 With respect to alternatives, he was
18 asked -- I'll switch to a different topic. Do you
19 recall Mr. Roberts recommending that you invest in
20 private placements with Stifel?

21 Yes. I mean, I pretty much blindly followed
22 his advice. I don't know much about them other than a
23 conversation that he would invest in them, too. He
24 may be investing in. I believe he was investing in
25 them. They're good investments.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
157

1 Well, that's just false because Mr. Roberts
2 recommended five other alternative investments, and
3 Mr. Jannetti rejected each of those recommendations.
4 So he wasn't just blindly following Mr. Roberts's
5 advice. That's not true. He falsely denied knowing
6 about technology stocks.

7 I asked him about Dynatrace and the other
8 stocks, the ones that are underlie the single stock
9 notes and the stocks in the Solutions account. He
10 claimed not to know any of them were technology
11 stocks. I didn't know what they were.

12 What does the other testimony and evidence
13 show? First of all, I asked him, you knew that Mr.
14 Roberts focused on technology companies. He told me
15 that that was -- that he was good at technology.

16 Did Mr. Roberts tell you that the individual
17 stocks you would buy on the Solutions account would be
18 focused on technology stocks? He said he was a
19 technology guy. I don't recall him saying that.

20 Next slide. Here he is sending Mr. Roberts
21 a screenshot of the market performance of Square.
22 Thanks, Scott. Here he is sending another screenshot
23 of the market performance of all the other stocks.

24 And we're supposed to believe that he is
25 looking these stocks up online on his phone, has them

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
158

1 saved in his Apple stock app, and he doesn't know that
2 a single one of these stocks is a technology stock?

3 Again, if you read his text messages and you
4 conclude that he doesn't know that these are
5 technology stocks, I'll be shocked.

6 Go to the next slide. He falsely claims
7 that Mr. Roberts convinced him to forego the 1031
8 exchange to invest in structured notes. Now, you see
9 the allegation there in the statement of claim. And
10 his allegation is that Roberts was so convincing that
11 he successfully solicited Mr. Jannetti to withdraw
12 11.2 million of the 1031 exchange intermediary from
13 the sale of property, forego the tax benefits, and
14 invest in structured notes.

15 That's just false for a couple of reasons.
16 Number one, the reason that Mr. Jannetti was
17 struggling and ultimately decided not to do the 1031
18 exchange is for two reasons. Number one, and you can
19 see the testimony on the right, he knew he would have
20 to buy additional real estate in order to effectuate
21 the exchange.

22 I knew that would require a lot of research.
23 I wanted income-producing properties for sure, but I
24 didn't know really where to look or how to go about
25 it. In addition, prices were high.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
159

1 One of the reasons that you were struggling
2 over whether to do the 1031 exchange was, Number one,
3 locating the property. He says, yeah. That was one
4 reason. And another reason was that the real estate
5 values were pretty high at the time; isn't that
6 correct? And he says that was probably a secondary
7 reason.

8 Those are the reasons he didn't do the 1031,
9 but the allegation is false for another reason. The
10 evidence has proven that Mr. Roberts didn't recommend
11 that he invest those proceeds in structured notes.
12 Mr. Roberts recommended that he invest those proceeds
13 in a diversified portfolio.

14 July 20, 2021, he sends an email to Mr.
15 Jannetti in which he recommends mutual fund equity --
16 equity mutual fund managers, structured notes which he
17 already held, tactical ETFs, broad based ETFs, dogs of
18 the Dow. He's got his growth stock component there,
19 alternatives, and closed end funds. That's what he
20 recommended in July of 2020.

21 Go to the next slide. He sends it to him
22 again on August the 9th, 2021. I said 2020. I meant
23 2021. He sends it again on August the 9th, 2021. Not
24 exactly the same, but the same diversified portfolio,
25 tactical allocations, broad based allocation ETFs,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
160

1 dogs of the Dow stocks. That's what he recommended,
2 not structured notes.

3 He denied receiving that diversified
4 portfolio recommendation from Mr. Roberts. I asked
5 him, and do you recall Mr. Roberts recommending this
6 diversified portfolio that we've just gone through,
7 Mr. Jannetti? No. Do you remember him sending this
8 to you? No.

9 Then we look at his text messages. August
10 of '21. That's less than two months after those two
11 emails that I just showed you with the recommendation.
12 Jannetti says, I got an offer of 26 million for my
13 Hamptons land which is a different property. I may be
14 in a similar situation soon, trying to figure out
15 whether to pay tax or 1031. We can chat tomorrow.

16 Maybe you have thoughts or just invest as we
17 discussed across a more diverse spectrum. We may not
18 need to chat if I already know your thoughts.
19 Diversify as you recommended earlier.

20 And I asked him about that text message.
21 Does that message refresh your recollection, Mr.
22 Jannetti, about discussions you had with Mr. Roberts,
23 about the recommended diversified portfolio that I
24 showed you before the break? Does that refresh your
25 memory? He says, okay. That may -- okay, that, we

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
161

1 may have discussed.

2 He falsely claimed that margin was Roberts's
3 idea. Whose idea was it? Chuck's. Tell the panel
4 how it came about. So how the word came up, margin,
5 in the discussion, I don't know. But I remember him
6 telling me, I said, do you use margin? He says, I do.
7 So Mr. Jannetti brought it up.

8 Go to the next slide. We know he had
9 experience with it because he had used a line of
10 credit at U.S. Trust or Bank of America. He used it
11 secured by his brokerage account.

12 He used it to invest in real estate. He
13 testified to that. We know it was at least \$3.75
14 million. So he had experience with this concept
15 before he ever came to Mr. Roberts.

16 Go to the next slide. Here's this text to
17 Mr. Roberts, September of 2020. Other mortgage money
18 just hit my account. Cannot buy anything on margin
19 today and fund tomorrow. Roberts says, we can send
20 you -- go back. Roberts says we can send you a
21 document to sign you up for margin. He doesn't even
22 have a margin account, and he's asking about margin.

23 Go to the next slide. This is the
24 application that opened the margin account signed
25 September the 28th, 2020. After the first text, we

HEARING
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January 24, 2025
162

1 see where he's asking Mr. Roberts about margin.

2 He falsely denied knowing that the Solutions
3 account secured the margin loan. Did you know that
4 the stock account -- that the Solutions account was
5 placed as collateral for the structured note account?
6 No idea. Did you authorize that? No. I didn't know
7 it was a possibility.

8 When you sent this text in November of '20,
9 did you understand that your structured note account
10 and the solution stock account were linked for
11 purposes of the margin? His testimony, no. That's on
12 direct.

13 Go to the next slide. That's just false
14 testimony. The client agreement, which he agreed to
15 in writing, the agreement and contract that they're
16 relying upon in this case specifically says in the
17 section on margin, you agree that all securities held,
18 carried, or maintained by Stifel for any of the
19 accounts you maintain at Stifel and all other property
20 you maintain at Stifel shall be collateral for such
21 extensions of credit to you by Stifel, period. It's
22 in the very contract that they rely upon.

23 Next slide. He got account statements every
24 month for his solutions or stock account. This one is
25 November of 2020. Every single stock in the account

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January 24, 2025
163

1 has the word "margin" out to the right of it.

2 Clearly, he knows that they're margin.

3 Go to the next -- look at his text message.

4 This is his text message, November the 16th. I don't
5 want to max out my margin, but what is the limit? I
6 intend on staying well under. Now, that's a pretty
7 good indication that the man knows that there's risk
8 associated with margin. Otherwise, why would he worry
9 about staying under the limit?

10 But again, he says, I suppose you would add
11 the million in my brokerage account. And he means the
12 stock account, the Solutions account. I suppose you
13 would add the million in that account, plus the
14 approximately 10 million in notes to determine margin.

15 That text right there shows you that his
16 testimony that he didn't know the Solutions account
17 was linked to the margin is false.

18 Go to the next slide. He falsely accused
19 Mr. Roberts of recommending he get mortgages for the
20 purpose of investing in structured notes. Now, put
21 the statement of claim allegation right in front of
22 you, and the allegation is that Mr. Roberts
23 recommended he get mortgages to invest in structured
24 debts. It's not true.

25 Go to the next slide. What did he testify

HEARING
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January 24, 2025
164

1 to? This is on direct. This is his own lawyer asking
2 the question. In regard to mortgages, did you have a
3 conversation with Mr. Roberts about taking mortgages
4 and investing the proceeds? Yes. Can you tell the
5 panel definitively who initiated that conversation?

6 Now, he thought he was going to say Mr.
7 Roberts, but he didn't. He says we were talking about
8 the yields on the notes, and it was -- we were talking
9 about the notes are returning 15 percent roughly.

10 Now, that's a false statement because the
11 conversation about the mortgages happened in March of
12 2020, right after he buys the first couple of
13 structured notes. They haven't paid anything. We
14 haven't even gotten to an observation date. They
15 haven't paid a coupon. They're not yielding anything.
16 So that's a false statement.

17 But then he goes on. He says, well, I think
18 it was me. And I said, Chuck, my houses are paid off,
19 but the interest rates are lower, like, the interest
20 rates or whatever they are now, 3 percent.

21 Does it make sense to take mortgages on the
22 house and put them into structured notes? It seems
23 like -- is it that simple arbitrage? So Mr. Jannetti
24 is the one that brought it up for the first time.

25 Go to the next slide. Then when he gets the

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January 24, 2025
165

1 mortgage proceeds -- remember, it took several months
2 to actually close on the mortgages, started the
3 process in March, and now we're at September 2020. So
4 we're about six months later.

5 He sends a text to Mr. Roberts. We should
6 probably either grab a biz lunch or set aside some
7 time to discuss how to invest the proceeds from the
8 mortgages. Well, if Mr. Roberts is alleged to have
9 recommended that he get mortgages to invest in
10 structured notes, why are these -- Mr. Jannetti
11 sending a text saying we need to sit down and talk
12 about how to invest?

13 He then says, your choice, let me know. I'm
14 coming into a bunch of money following the mortgages
15 and would appreciate the investment discussion.

16 Go to the next slide. Believe this was on
17 cross. I said, let me ask a more specific question.
18 In February, March of 2020, before you applied for the
19 mortgages, yes, did Mr. Roberts recommend that you get
20 mortgages to invest in structured notes? February,
21 March 2020.

22 His answer, at that time, I can't tell you
23 specifically whether he did or did not. But he did
24 say I will get the mortgages and give me the money and
25 I will invest it for you.

HEARING
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January 24, 2025
166

1 So his allegation in his statement of the
2 claim that Mr. Roberts recommended he get mortgages to
3 invest in structured notes is simply not true. That
4 testimony establishes it.

5 Go to the next slide. Now let's talk about
6 this claim about the Solutions account. Their claim
7 is that Mr. Roberts did not manage the Solutions
8 account consistent with the 2017 strategic allocation
9 philosophy. And I'm going to say that claim is
10 dishonest and misleading.

11 Go to the next slide. What is the argument?
12 He signs a client agreement confirmation. And
13 under -- next to portfolio, it says CR team strategic
14 allocation. And the argument is that that means the
15 investment philosophy statement from 2017, which is
16 what I have up on the right.

17 And their argument is that that philosophy
18 statement is the definition, even though it's three-
19 plus years before, is the definition of the CR team's
20 strategic allocation. And Mr. Roberts didn't follow
21 that, and therefore, that's unsuitable. That's a
22 breach of contract.

23 It is a false and dishonest claim because
24 Mr. Jannetti never saw the philosophy statement.
25 That's proven. He never saw the philosophy statement.

HEARING
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January 24, 2025
167

1 He has no idea what is in that philosophy statement.
2 And I guarantee it, he never looked at CR team's
3 strategic allocation and had any question or idea
4 about what that was.

5 He -- oh, before I get to that, even if he
6 had seen it, the philosophy statement itself says it
7 can be modified per the client. The Stifel -- the
8 client agreement says exactly the same thing. The
9 wrap fee disclosure brochure says exactly the same
10 thing, that it can be modified based upon what the
11 client wants.

12 What did he testify that he knew would be in
13 this account? Go to the next slide. I asked him, you
14 understood from the very beginning of the Solutions
15 account that what Mr. Roberts was going to be buying
16 in that account were individual stocks, right? And
17 his answer, yes.

18 So what is the argument? That Mr. Roberts
19 should have invested in all those other things that
20 are set forth in the strategic allocation, philosophy
21 status from 2017 when his client knows that the only
22 thing he's going to be buying is stocks.

23 He knew exactly what was in the accounts.
24 He knew it exactly that they held only stocks. He
25 knew it from Day 1.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
168

1 Is there any evidence in this case that he
2 ever called up Mr. Roberts and says, Chuck, where are
3 the mutual funds? Where are the closed end funds?
4 Where are the ETFs? Where are the dividend paying
5 stocks? The dogs of the Dow? These other components
6 that are in your strategic allocation model, where are
7 those things?

8 There is zero evidence of it because he
9 always knew that stocks would only be bought. That's
10 all he ever expected to be bought in the account. And
11 I won't go through this again, but Mr. Roberts tried
12 to get him to invest in other things.

13 Again, he sent him a diversified portfolio.
14 These are all -- not all because he didn't want a bond
15 component, but these are most of the components of the
16 strategic allocation portfolio. He sent it to him two
17 different times.

18 And contrary to what he said in his closing,
19 Mr. Roberts testified this would have been in the
20 Solutions account. So it is not separate from the
21 Solutions account. He sends it to him two different
22 times, and the man doesn't want it.

23 And we're supposed to have implemented a
24 2017 model portfolio that the man clearly didn't want,
25 knew he wasn't getting, never expected, and never

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January 24, 2025
169

1 questioned.

2 Go to the next slide, Slide 95. He falsely
3 accused Mr. Roberts of selling stocks in the Solutions
4 account without authority to generate cash because it
5 had a higher margin release.

6 Go to the next slide. I'm assuming that you
7 remember that that testimony. He questioned Mr.
8 Jannetti about it. He crossed Mr. Roberts. It's a
9 false allegation which I showed on my redirect of Mr.
10 Roberts.

11 What do the text messages show? December
12 30, 2021, Roberts sent a text to Mr. Jannetti. I've
13 been working since 8:00 a.m. in case you want to call
14 on tax loss selling. And then they have a call,
15 December the 30th. Can you go back? December the
16 30th. Five-minute call after that text message.

17 Then we go to December 31. He sends another
18 text. Hi. Is there any tax loss selling you want to
19 do? There's only three more hours to do so. They
20 then have another call. This one on December 31,
21 three-minute call.

22 And then what happens that same day? We see
23 in the Solutions account numerous stocks sold on 12/31
24 to generate realized losses for tax purposes, offset
25 the gains that Mr. Jannetti had from his other

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January 24, 2025
170

1 investments in 2021.

2 So the suggestion that Mr. Roberts sold
3 those stocks without authority in order to generate
4 cash for the margin purposes is simply false, and it's
5 certainly wasn't done to free up margin to buy more
6 structured notes.

7 This is December 31 of 2021. He didn't buy
8 any structured notes in 2022. So it clearly wasn't
9 done for that purpose.

10 He then pivots to, well, complaining about
11 the Solutions account staying in cash. Go to the next
12 slide. And remember the argument. This came up --
13 sorry. You can take that down.

14 This came up during Mr. Roberts's testimony
15 the last time we were here. And counsel for the
16 Claimant showed Mr. Roberts an April 2022 account
17 statement that shows \$2.6 million in the Solutions
18 account in cash. You might remember that.

19 Then he skipped to October of 2022. Didn't
20 show him any of the ones between there, skips to
21 October. And he shows him that account statement. It
22 still shows \$2.6 million of cash in the account
23 implying that that \$2.6 million had sat in that
24 account, a solutions fee based account, for six
25 months.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
171

1 False. Misleading. I didn't show you the
2 May, June, July, August, September account statements
3 where the cash dropped to \$900,000 because Mr.
4 Jannetti transferred a 1.7 million of the cash from
5 solutions to the structured note account and then out
6 the account to fund the real estate project with Larry
7 Caine.

8 Then we go to the October statement. The
9 cash is back to \$2.6 million. That's correct. But
10 it's because Mr. Jannetti decided to sell \$1.6 million
11 more in stocks that month. And then that cash was
12 transferred to the structured note account and then
13 transferred out again to continue funding his
14 projects.

15 So the suggestion that Mr. Roberts took the
16 account to cash and had that same cash sit there for
17 six months is just not true. It's not true.

18 Let's go to the next slide. Let's go to --
19 let's talk about this implied volatility issue. This
20 came up during the cross of Tom Lee. And if you
21 remember on cross, Mr. Erez was grilling Mr. Lee on
22 the change to the implied volatility limits at Stifel
23 for single stock notes.

24 And he grilled Mr. Lee on whether a -- is
25 there a document that exists that evidences that

HEARING
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January 24, 2025
172

1 change to the policy? They knew the whole time there
2 was a document that documented the change to that
3 policy. It was produced in discovery, and it was
4 sitting in Claimants' Exhibit 17, which was already in
5 evidence in the case.

6 So here he is crossing Mr. Lee, implying
7 that there's no document to document this change in
8 the implied volatility limit and the very document is
9 in their own exhibits. And then he rattles off on
10 cross implied vol numbers that supposedly came from
11 Mr. McCann.

12 If you remember, crossed Mr. Lee on these
13 implied vol numbers. Didn't provide him on the
14 document. Didn't provide him with any data, any
15 background, any backup at all, just rattles off these
16 numbers.

17 And then we have to find -- we have to go
18 get Ms. Popel to go back and actually check the
19 implied vols on each of these single stock notes. And
20 we find out that Mr. McCann looked at the wrong date.
21 And the implied vol numbers for the single stock notes
22 all complied with Stifel's implied volatility limits,
23 an intentional effort to mislead this panel.

24 I could go on. There are numerous other
25 examples showing that Mr. Jannetti and his case is not

HEARING
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January 24, 2025
173

1 credible. But in the interest of time, I'll move on.

2 Now, on their legal claims, they've got
3 negligence, breach of contract, breach of fiduciary
4 duty, fraud, 517. I'm not going to spend too much
5 time on the elements. We briefed it very well in our
6 hearing brief. We've given you a case notebook, as
7 well.

8 But I do want to highlight a few key points.
9 On negligence, breach of fiduciary duty, they have to
10 prove that Stifel, Mr. Roberts breached the duty of
11 reasonable care or fiduciary duty owed to Mr.
12 Jannetti. Not a duty owed to some other customer, not
13 some duty Mr. Roberts owes to Stifel, not some duty
14 owed to the regulators under their rules, but a duty
15 owed to him.

16 And they have to prove that Stifel and Mr.
17 Roberts's breach of duty proximately caused his loss.
18 It's not enough to prove a breach.

19 They got to prove that that alleged breach
20 is what caused the loss. And if you find that
21 something else caused some or all of the loss, such as
22 the market, which is which is the cause of the loss in
23 this case, or Mr. Jannetti's own conduct, his own
24 fault, then the negligence breach of fiduciary duty
25 claims fail. And I would submit to you, they have not

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January 24, 2025
174

1 proven proximate cause on any of their claims.

2 On their breach of contract claim, you've
3 got to prove an existence of a contract. It's been a
4 long time since I was in law school, but my
5 recollection is you have to prove an offer and
6 acceptance and a meeting of the minds on what the
7 terms of the contract are and then a breach of those
8 terms.

9 Let's talk about the Solutions account
10 claim. Is there evidence in this case of a meeting of
11 the minds that Mr. Roberts would invest in that
12 Solutions account in all of the components of his
13 philosophy statement from 2017? No, there is zero
14 evidence, as I said earlier.

15 All he ever told him he would invest in, all
16 he ever wanted, all he ever saw, all he ever expected
17 was individual stocks. There's no breach of contract
18 claim that somehow Mr. Roberts breached the contract
19 to invest in those other components when that was
20 never a meeting of the minds, and Mr. Jannetti
21 rejected his attempts to get him to invest in those.

22 Let me talk about the fraud claim. They
23 have to prove that the -- Mr. Roberts made a false
24 statement of an existing material fact to Mr.
25 Jannetti, not just somebody else, but to him or

HEARING
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January 24, 2025
175

1 omitted a material fact that the next statements made
2 not misleading.

3 Now, what is a material fact? It's one that
4 that would be important to the investor, one that
5 would change the total mix of information the investor
6 has, which includes, of course, all the documents he
7 has sitting on his desk or in his email inbox.
8 Puffery, opinions, statements as to future events
9 cannot support a fraud claim as a matter of law
10 because they are not material and they're -- no
11 reasonable person would rely upon.

12 Now we cite the Carbelli (phonetic) case,
13 Eleventh Circuit case, in our brief. It says
14 excessively vague, generalized, and optimistic
15 comments. The sorts of statements that constitute
16 puffery aren't those that a reasonable investor
17 exercising reasonable care would view as moving the
18 investment needle.

19 That is, they're not material. In that
20 case, the Court recognized that the statement you
21 cannot lose was puffery on which the investors fraud
22 could not be based.

23 We cite the Silver case, a Southern District
24 of Florida case in our brief. In that case, they
25 found the statements that the value of the Plaintiff's

HEARING
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January 24, 2025
176

1 home would continue to rise and she would not have a
2 problem refinancing were clearly statements of opinion
3 and projections about future events. And as such, did
4 not constitute statements of existing material fact,
5 which is a prerequisite for actionable fraud.

6 So these alleged statements by Mr. Roberts
7 not alleged, some he did make -- solid, super solid,
8 slow and steady, like watching paint dry, I'll double
9 the whole ball of wax in two years, others like it --
10 pure puffery. Statements of opinion, statements about
11 future events under the case law cannot support a
12 fraud claim as a matter of law.

13 The second element they have to show on
14 their fraud claim is that Mr. Roberts knew the
15 statements were false and made them anyway with the
16 attempt to defraud Mr. Jannetti. I don't believe
17 there's any evidence here that Mr. Roberts acted with
18 an intent to defraud this man.

19 They have to show that Mr. Jannetti relied
20 on any alleged false statement or omission and that
21 the Plaintiff's reliance was reasonable. That is an
22 element of their claim that they have a burden of
23 proving. We don't have to disprove it. They're a
24 burden, and they have to prove proximate cause as I've
25 said.

HEARING
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January 24, 2025
177

1 Now the elements of Section 517 are very
2 similar. He cites the Gottschneur case. Look at the
3 quote he cites. They're the same elements as
4 10(b)(5), which is based on common law fraud. All the
5 same elements, but there are a couple of minor
6 differences.

7 Number one, under 517, the misrepresentation
8 or omission of material existing fact must have been
9 made in connection with the purchase or sale of -- of
10 a security. So that's a little different from the
11 common law fraud claim.

12 It's not enough to prove that Mr. Roberts
13 made some statement that they claim is false or -- or
14 omitted some. It has to have been done in connection
15 with Mr. Jannetti buying or selling a specific
16 security. And a Florida law says negligence is enough
17 under 517, so that's clearly different from common law
18 fraud.

19 All the other elements are required. The
20 Claimant is still required to prove reasonable
21 reliance under 517. He cites one case that says no.
22 We cite several cases in our brief that say reasonable
23 reliance is required under 517. And a Plaintiff's
24 reasonable reliance on an alleged misrepresentation is
25 not reasonable if the Plaintiff with the exercise of

HEARING
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January 24, 2025
178

1 reasonable diligence could have discovered the truth.
2 That's from the Gottschneur case, which he cites.

3 So even if you find that Mr. Roberts made
4 some misrepresentation or omission of existing
5 material fact in connection with Mr. Jannetti buying a
6 security, which we don't think they've proven -- but
7 even if you find that, if he could have discovered the
8 truth simply by reading the white paper, reading the
9 structured investment disclosure, reading the
10 prospectuses, any of them, then his fraud and 517
11 claims fail.

12 Now, let me address this one point he makes
13 about the federal rule and the SEC say that just
14 delivering a prospectus doesn't cure an alleged
15 misrepresentation. Well, a regulator wants to make
16 that argument in an enforcement proceeding, fine.
17 This is not an enforcement proceeding. They're not
18 FINRA. They're not the SEC. They are a private
19 litigant who has a burden of proving every element of
20 their civil claims.

21 And one of those elements is reasonable
22 reliance. And you can't just turn a blind eye to the
23 other material and information that's put in front of
24 you that would tell you exactly what you now claim you
25 weren't told or exactly what you now claim was

HEARING
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January 24, 2025
179

1 misrepresented.

2 That's what the law says. I don't care what
3 FINRA's policy is in an enforcement action. That
4 doesn't control this case. And proximate cause is
5 also required under 517. He cites the Rousseff
6 (phonetic) case, and we've cited the Compamia
7 (phonetic) case and the Barnett case in our brief.

8 The Rousseff case, the Claimants sought
9 rescission. They still own the security, and the
10 remedy they sought was rescission. This is a damages
11 case. The cases we cite say that even under 517, when
12 you're seeking damages, you have to prove proximate
13 cause.

14 CHAIRPERSON SALIS: (Inaudible) about time
15 to take a break, but I didn't want to interrupt you.

16 MR. HILLIS: Yeah. It -- it is, and I'm
17 happy to take it now.

18 CHAIRPERSON SALIS: Okay. Very good.

19 (OFF THE RECORD)

20 (ON THE RECORD)

21 CHAIRPERSON SALIS: It's 2:25.

22 MR. HILLIS: What is the Claimants' fraud
23 related claims under common law, negligent misrep,
24 517? The claim is that that Mr. Jannetti was told he
25 would get 12 to 15 percent yield or coupon. He was

HEARING
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January 24, 2025
180

1 told he would get it at no risk to principal. That's
2 his -- that's his claim. That's always been his
3 claim.

4 He testified under oath that Mr. Roberts
5 represented he would get 12 to 15 percent with no risk
6 to principal. They have not carried their burden of
7 proving that claim. The evidence had proven
8 conclusively that Stifel and Mr. Roberts disclosed the
9 risks. Ms. Jannetti understood the risk.

10 And his claim that he believed the
11 structured notes were super safe with no risk to
12 principal is not credible. He understood the risks in
13 his -- as I said in his testimony that he thought they
14 were super safe with no risk is not credible.

15 Again, the primary risk of structured notes
16 is stock market risk, the risk that the underlying
17 security, the ETF, or the stock will drop in price
18 below the barrier. And as a result, no coupon gets
19 paid under the law of principal maturity. He clearly
20 understood that risk, and his own expert, Mr. Heller,
21 conceded it on cross. The evidence is overwhelming.

22 He knew it from his own education, business,
23 investment knowledge, and experience before Stifel.
24 I'm not going to go through all that again. But he
25 certainly understands that a stock ETF and an

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January 24, 2025
181

1 individual stock can -- can drop in value and can drop
2 substantially in value. Remember what happened after
3 he sold his -- his first company, NikoNET.

4 He gets \$4 million, 2 million of it in ICG
5 stock, 2 million in cash. He puts a million in one
6 stock, Microsoft, and then he puts the other million
7 in some other technology stocks that he picked. The 2
8 million in ICG stock went to zero.

9 The billion he invested in the other
10 technology stocks went to close to zero when the tech
11 bubble collapsed in the early 2000s. After that
12 experience alone, he certainly understood that
13 technology stocks are risky and can drop dramatically
14 in price.

15 Stifel and Mr. Roberts disclosed the risks.
16 Mr. Roberts testified that he explained how the
17 structure notes work. He explained the risks. He
18 explained that you can lose principal at maturity if
19 the price of the underlying drops below the barrier.
20 He explained that you can miss coupons if it drops
21 below the barrier.

22 Stifel disclosed the risks in writing
23 numerous times. Let's look at the first slide, 106.
24 This is in the account agreement in the structured
25 products section. Now, the account agreement is

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January 24, 2025
182

1 certainly lengthy, but it also has a very good index
2 where you can look at exactly what you want to look
3 at.

4 He opens an account. He's investing his
5 structured products. All he's got to do is look at
6 the index and note -- and go right to the page. Tells
7 you right there what the risks of investing in
8 structured products are, including principal risk.

9 Let's go to the next slide. A structured
10 investment's disclosure. Stifel sent this to him
11 multiple times before he bought the first structured
12 note. It tells Mr. Jannetti what the risks of
13 investing in structured notes is.

14 Next slide. The white paper, called the
15 Illustrative Enhanced Shield Structured Investment.
16 We call it the white paper for short. This was sent
17 to Mr. Jannetti February the 10th, 2020. February the
18 10th, 2020, before he has bought the first structured
19 note. Let's take a look at it.

20 CHAIRPERSON SALIS: If you could (inaudible)
21 figure on the screen, it'd be great. Just that way, I
22 can see --

23 FEMALE VOICE: Oh, sure.

24 MR. HILLIS: Sure. Can you make it bigger
25 (inaudible)?

HEARING
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January 24, 2025
183

1 Now, his is -- this is a two page document.
2 Not as long as the Bible that Mr. Jannetti referenced
3 when he's referring to the prospectus. This is --
4 this is a two-pager. Let's see what it says. They --
5 they want you to ignore this document. They don't
6 think it's important at all. We think it's critically
7 important.

8 Yield security strategy. Potential for
9 enhanced yield in the form of a contingent coupon in
10 exchange for full principal at risk with contingent
11 downside protection. Then it goes on to tell you what
12 happens at maturity.

13 At maturity, the principal payment will be
14 equal to -- basically, number one, the -- the first
15 bullet says all your money back plus the final coupon
16 if the price of the underlying is above the barrier.

17 But if it's not below the barrier, then what
18 you get back is your original investment less than --
19 the negative -- the work -- the return of the -- of
20 the worst performer, basically. If the worst
21 performer is down 60 percent, then you lose 60
22 percent. That's what the second bullet point tells
23 you.

24 And it says an investor will be fully
25 exposed to negative performance of the worst

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
184

1 performing reference assets and will lose some or all
2 of the principal investment. Then it gives you a
3 simple little chart to follow. That's security is the
4 closing level of the worst performing reference asset
5 at or above 75 percent of its initial level.

6 (Inaudible) barrier in this particular example. If
7 the answer is no, the investor receives principal
8 amount invested plus the negative return as a worse
9 performer. Investor will lose some or all of the
10 principal invested in the note.

11 Now, he didn't just send this. What was in
12 Page 2, which has risk disclosures. Here it says,
13 payment at maturity, and tells the investor again, the
14 payment at maturity is based on the value of the
15 reference asset at maturity. If the closing value of
16 the reference asset is lower than a predetermined
17 barrier, the note exposes investors to the same
18 downside risk as the reference asset. If the value of
19 the reference asset drops specifically at maturity,
20 investors could lose some or all of the principal
21 invested, and any two funds paid may not be sufficient
22 to offset any principal loss.

23 Market risk down here. If the closing value
24 of the reference asset at maturity is lower than the
25 predetermined barrier, the note exposes the investor

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
185

1 to the same downside risk as the reference asset. So
2 the investor could lose some or all of the principal
3 invested in the net. Past results don't guarantee
4 future results, which everybody knows.

5 Now, if it was Mr. Roberts's desire and
6 intention to mislead this man, to make him think that
7 structured notes, they are guaranteed to yield with no
8 risk to principal, why in the world does he send in
9 this document? It makes no sense whatsoever.

10 And not only does he send it to him, but he
11 sends it to him before he has bought any structured
12 note. And then he has a telephone call where Mr.
13 Roberts testified that they went over. This document
14 tells you everything you need to know about structured
15 notes and the risks involved.

16 What else did we send in writing? Well,
17 Roberts's team sends a portfolio review. Let's go to
18 slide 111. Now this is an email that Mr. Connolly
19 sends March 16th, 2020 -- can you make it bigger?
20 Just doesn't look bigger on our -- on the screen,
21 but -- sorry it's not bigger. Maybe it's -- you can
22 see it on the big screen.

23 But in any event, Tyler Connolly sends this
24 March 16, 2020. This is right after Mr. Jannetti buys
25 the first few structured notes. And he says, as

HEARING
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January 24, 2025
186

1 discussed with Chuck, please find a report detailing
2 the primary data points.

3 Let's go to the next slide. And here's the
4 portfolio review. And it's hard to read, and I'm
5 sorry. But it lists each of the structured notes that
6 Mr. Jannetti has just bought. And in the column to
7 the right of each one, it gives a description.

8 And at the bottom of the description for the
9 first note -- but it's the same for every other
10 note -- it says, at maturity of the final level of
11 neither underlying has fallen below 70 percent of its
12 initial level, the product offers a capital return of
13 a percent. Otherwise, the product offers a capital
14 return of a percent, minus 1 percent for every 1
15 percent fall in the worst performing underlying.

16 Tells Mr. Jannetti right there for each of
17 the notes that he bought that if at maturity, the
18 price of the underlying, which he knows full well can
19 drop, drops below that barrier, he's going to suffer a
20 loss. Tells him right there.

21 Go to the next slide. Now, they -- they
22 want to -- before I get to that, so prospectus -- I
23 mean, he buys 44 different notes. Actually, there
24 are more than 44 transactions because he bought a few
25 notes in multiple accounts, but 44 structured notes.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
187

1 He gets a preliminary prospectus for every one. He
2 gets a final prospectus for everyone.

3 Here he asked Mr. Connolly to send him
4 preliminary prospectuses. I showed you this one
5 earlier. Let's look at the prospectus. I'm not going
6 to go through a lot of these. You've -- you've seen a
7 lot of these disclosures. But on the first page of
8 each prospectus, and most of them on the first half of
9 the first page, it tells the client that if the price
10 of the underlying drops below the barrier, you're
11 going to suffer a loss.

12 And the amount of that loss is going to
13 depend upon how far below the barrier it has dropped.
14 But you could lose some or all of your principal. All
15 of the perspectives just tell Mr. Jannetti that and
16 all he had to do was look at the first half of the
17 first page to understand exactly what the risk was.

18 Now, they want to pretend these disclosures
19 weren't made. Their argument is that these documents
20 don't matter because he allegedly chose to be
21 irresponsible, to be negligent, and not look at them.
22 That's what he claims under oath. It is incredible.
23 He asked for prospectuses, but then under oath says he
24 didn't look at it. What sense does that make?

25 He admits he saw the fee in the prospectus.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
188

1 I finally got him to admit that on cross. He admits
2 he pulled observation dates from prospectuses so he
3 could put them in his live spreadsheet. So he clearly
4 looked at prospectuses, despite his claim that he
5 didn't read them. All we had to do was look at the
6 first half of the first page.

7 The FCC and FINRA require these prospectuses
8 and disclosures to be provided, and they advise
9 investors to read them. If they didn't think it was
10 important, they wouldn't require it, and they wouldn't
11 advise investors to read it.

12 Stifel advised Mr. Jannetti to read these
13 documents repeatedly. In the structured investment
14 disclosures, we -- Stifel advises to read the
15 perspectives in the client agreement, in the white
16 paper, and in every single email sending him a
17 preliminary prospectus and a final prospectus, it
18 advises him to read the prospectus. He agreed to do
19 so, if you read the client agreement.

20 He agreed to look at and read the documents
21 provided. He can't nullify these written disclosures,
22 pretend they weren't made, simply because he comes in
23 here and claims he didn't read them. The law is
24 clear. He is charged with knowledge of the content of
25 these documents regardless of whether he reads them.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
189

1 Cited the HCM High Yield Opportunity Fund
2 Case, Southern District Of Florida case, in our brief.
3 Court said the securities laws do not encourage or
4 reward investors for throwing caution and prospectuses
5 to the wind. Besides the Dolbridge (phonetic) case,
6 which is a Tenth Circuit case, an investor has a duty
7 to read all disclosures, prospectuses, and similar
8 documents, and knowledge of information contained on a
9 prospectus or an equivalent document should be imputed
10 to investors who fail to read such documents.

11 These disclosures are important for another
12 reason, and it's justifiable reasonable reliance,
13 which I touched on earlier. I told you it's not
14 enough for them to prove that Mr. Roberts made some
15 alleged misrepresentation or omission. We haven't
16 they haven't proven it.

17 But even if he had, it's not enough. They
18 have to prove that Mr. Jannetti relied upon that and
19 that he was reasonable and justified in doing so.
20 That's not some technical argument. That's a
21 substantive element of their claim that they have to
22 burden the proof, and they have failed.

23 The law is clear that a reasonable investor,
24 particularly one with Mr. Jannetti's experience and
25 expertise, is not justified in relying on alleged

HEARING
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January 24, 2025
190

1 misrepresentations and omissions that are contradicted
2 by disclosures and prospectuses and other documents
3 that are provided. That's the Rhodes (phonetic) case,
4 which is Southern District Of Florida case, and the
5 First Union case, which is Eleventh Circuit case that
6 we cited in our brief. But there are numerous other
7 cases across the country say the same thing.

8 The white paper, the prospectuses, the other
9 documents disclosed the risks. He is charged with
10 knowledge. So any alleged reliance that he wants to
11 claim on verbal statements by Mr. Roberts -- these are
12 super safe, super solid, no risk to principal -- is
13 unreasonable as a matter of law.

14 These documents were sitting right in front
15 of Mr. Jannetti. That email was sent to his email
16 box. He admitted those prospectuses initially were
17 mailed to his house. He admitted receiving every
18 single one of those emails, a set of preliminary
19 prospectus and a final prospectus. And according to
20 him, he was negligent, irresponsible in not reading
21 them.

22 So either he reviewed those documents and
23 knew what they said, and therefore, how can we have a
24 fraud claim? Or he was negligent in not reviewing
25 them, in which case his alleged reliance on these

HEARING
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January 24, 2025
191

1 alleged conflicting misrepresentations and omissions
2 is not reasonable as a matter of law.

3 His live spreadsheet proves he understood
4 the risk. He understood that the underlying asset
5 (break in audio) can jeopardize the note as a result.
6 This is his live spreadsheet. Now, it's not just one
7 page. There are lots of pages. There are lots of
8 pages.

9 He had a lot of structured notes spreadsheet
10 for every structured note he held. Mr. Roberts
11 testified he didn't have a single other customer that
12 did this, not one.

13 Now, I'm going to ask you. If -- if the
14 customer thinks that the yield is fixed, he's going to
15 get it, no question. It's guaranteed. I'm going to
16 get the yield. I'm going to get 12/13 percent. And
17 if the customer thinks there's no risk to my
18 principal, why can the world does he take the time to
19 prepare and monitor on a daily basis a live
20 spreadsheet?

21 And what does this live spreadsheet serve to
22 do? It serves to show him what the current price of
23 each underlying is, whether it is below or above the
24 barrier. And if it's below the barrier, it goes in
25 red. And the reason he does that is because every day

HEARING
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January 24, 2025
192

1 he wants to know where is the price of the underlying
2 relative to the barrier.

3 Why does he want to know that? Because he
4 knows that if the underlying is below the barrier on
5 the observation date, which he has down here, he gets
6 no coupon. And he knows that if it's below the
7 barrier at maturity, he loses principal. That's the
8 sole reason he keeps the chart. So he -- he monitors
9 that.

10 Then he then he does another thing. He
11 says, in the money -- ITBM. That's what that means,
12 in the money. So he knows whether it's above or below
13 the barrier. He also keeps track of how far down the
14 underlying has dropped from the original price. So in
15 this case, for example, XPI is 44.17 percent down from
16 where it started.

17 And again, he didn't just do this in late
18 2021. He's doing this every day. He sees it change
19 every day. He sees the price of the underlying go up
20 and down every single day. He knows exactly what the
21 risk of these notes is.

22 His text messages, his other statements, his
23 testimony confirm that he understood the price -- that
24 the price of the underlyings could drop below the --
25 the barrier, which is the market risk of a note.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
193

1 Let's look at some of this testimony.

2 You knew that the underlying indexes or the
3 underlying stocks later, did those fluctuate in price?
4 You knew that, yes?

5 Yes, I believe that's fair.

6 Here's a text February 23, 2021 from Mr.
7 Jannetti: I hope they keep tanking until prices are
8 struck Friday.

9 What's he talking about? He's talking about
10 the prices of the underlyings. He knows they can drop
11 go up and down.

12 Another testimony: When you said I hope
13 they keep tanking, you were -- you're referring to the
14 prices of the underlying and the structured notes that
15 you were considering so that when you bought those
16 notes on Friday, the underlying prices would be lower.
17 That's what you're referring to, right?

18 Again, Chuck shared with me that it's better
19 if they drop before they are priced, so reflection of
20 our many conversations. Yes.

21 Another text from Mr. Jannetti: New notes
22 forthcoming, seems like an opportune time. Prices are
23 down. Let's get those notes striped in the lows.

24 December 3, 2021, key month. Last month he
25 buys any structured note. The bad news, I'm out of

HEARING
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January 24, 2025
194

1 the money on three notes, which means he knows he's
2 got three notes. The price of the underlying is below
3 the barrier. The good news, it's a great day to
4 strike new pricing.

5 Testimony: By out of the money, you
6 understood that three of your notes, one of the three
7 underlying was below the barrier, correct?

8 Sure.

9 Here's a text from August of '20 giving Mr.
10 Roberts instructions on which notes to buy. Mr.
11 Roberts says, confirm, sounds great. You're becoming
12 a structured notes guru. He says, fingers crossed.

13 Well, I'm sorry. If there's no risk to the
14 principal, why would you need to have fingers crossed?
15 That shows he understands the risk.

16 Next. Here's another one. Another text
17 where he gives instructions on which notes to buy out
18 of the menu and how much to put in each one. Chuck
19 says, I like the way you think. Just haven't been
20 burned yet.

21 Well, if there's no risk, why would you be
22 making a comment about haven't been burned yet? We
23 already saw this text at the bottom. Let's go to the
24 next one.

25 These are the notes from Mr. Stevenson and

HEARING
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January 24, 2025
195

1 Ms. Lucarelli's call with Mr. Jannetti in April of
2 2021. During that call, according to the notes, Mr.
3 Jannetti says, I have a significant amount invested in
4 notes, and Chuck's been about 30 for 30 so far. Every
5 observation and role has been good. I know it is not
6 always going to be that way, but so far, so good.

7 Clearly an indication that he knows there's
8 risk.

9 And then there's this testimony. This was
10 on direct. Mr. Erez asked him: Sir, did you tell Mr.
11 Roberts that you wanted him to offer you structured
12 notes linked to single stocks? This is the June 2021
13 time period when Mr. Roberts first offers structured
14 notes to him and anybody in response to a conversation
15 they had.

16 And he -- Mr. Jannetti testified: We had a
17 discussion about single -- well, the genesis of this
18 discussion was there were three, and I know there are
19 three sectors as he was explaining, and the discussion
20 came up of offering were only one. So as I recall,
21 any of those sectors -- any of those three sectors
22 could potentially jeopardize that investment.

23 Well, I'm sorry. If there's no risk to
24 principal, which what he -- which is what he said
25 under oath he thought was the case, then how could one

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January 24, 2025
196

1 of the of the three sectors potentially jeopardize
2 everybody?

3 Let's go to the next slide.

4 This is the testimony on the Dynatrace note.
5 I asked him: And given the amount that you invested,
6 which was 6 million, is it fair to say from your
7 testimony yesterday that you had some trepidation
8 about investing that amount in this note?

9 And his answer is yes.

10 Again, if there's no risk to principal,
11 which is what he said he claimed he -- he thought, why
12 would you have any trepidation about investing any
13 amount in that note? Clearly, he knew there was risk.

14 December 3rd -- I'm sorry. December 30,
15 2022, this is late in the game. But he sends a text
16 message: The structured note maturing on January 6th
17 will not be in the money.

18 Clearly, he understands the market risk and
19 what can cause him to lose principal at maturity.

20 Mr. Jannetti's own expert, Mr. Heller,
21 admitted that he understood the market risk. I asked
22 him: You would agree with me that the market risk
23 associated with these structured notes is the risk
24 that the underlying drops in price below the barrier,
25 right? That's the market risk?

HEARING
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January 24, 2025
197

1 Mr. Heller says yes.

2 It might have to drop 25 percent, 30
3 percent, but the basic market risk is that the
4 underlying dropping in price, right? That's the basic
5 risk? Yes. And you don't have any doubt in your mind
6 that Mr. Jannetti understood that the underlyings of
7 these structured notes can drop in price? You don't
8 have any doubt, do you? No. No, you don't have any
9 doubt? I don't have any doubt that Mr. Jannetti
10 understood that the underlying could drop in value.

11 Go to the next slide. Mr. Jannetti
12 understood that higher yields meant higher volatility
13 and higher risks. Let's look at the evidence.

14 This is his testimony: Did you understand
15 that the prior -- I'm sorry -- that the higher
16 potential return, the higher the risk you have to
17 assume to get it? Did you understand that basic
18 concept?

19 He says, I'm not an investor. So he didn't
20 want to answer that question.

21 I didn't ask you if you were. I asked you,
22 did you understand that basic concept?

23 And he says, In general, I would say that
24 usually risk is tied to reward, yes.

25 Next slide. Now, he had held bonds in his

HEARING
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January 24, 2025
198

1 Merrill portfolio and some in his U.S. Trust
2 portfolio, as well. The account statements are in
3 evidence. This is just one example.

4 These are bonds that he held in his Merrill
5 Lynch account. Look at the yields on these bonds.
6 These are long term bonds, by the way. Fifteen,
7 twenty year bonds. Very different from a two-year
8 bond or a two-year structured.

9 But look at the rates. This man -- his
10 experience, if you read through his text messages,
11 there's no way that he thought he could get a
12 potential 13-to-15-percent coupon on a 2-year
13 structured note without taking more risk than what he
14 was taking on bonds yielding 4.66 percent or about
15 there. No way.

16 Let's go to the next slide. We talk about
17 volatility. Want to talk about implied volatility?
18 Well, let's look at Mr. Jannetti's own texts.

19 April 20, 2021. Hey, Chuck, educate me,
20 please. The VIX -- now, what's the VIX? The VIX is
21 the ticker symbol for the Chicago Board of Option
22 Exchange volatility index, and it is a measure of the
23 volatility of the stock market. That's what the VIX
24 is.

25 He says, the VIX has increased considerably

HEARING
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January 24, 2025
199

1 since the last round of notes was priced.

2 So this guy who testified in front of you,
3 trying to act like you didn't understand anything, is
4 following the VIX on his phone or online and says it's
5 increased considerably since the last -- last round
6 last round of notes was priced, meaning the market is
7 more volatile. I'm thinking I'd rather have you price
8 a new round of notes as I expect the yield to be much
9 higher; am I wrong?

10 He knows the yield relates to volatility.
11 He knows the higher the volatility, the higher the
12 yield.

13 He then sends another text message.
14 October -- that's a -- that's a misprint. I'm sorry.
15 That's his testimony. Sorry. October 2024.

16 Question: You understood that the more
17 volatile the market, the higher potential yields on
18 the notes, right? That's what Chuck told me. Let's
19 go to the next one.

20 Here's a text from Chuck where he says,
21 Well, the good news is the VIX has jumped nicely, so
22 next round of notes should be a higher yield.

23 Mr. Jannetti, June 3rd: I'm still
24 interested in notes, but looking for yields to
25 improve. I can invest at 10 percent with almost zero

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
200

1 risk, and I get paid interest upfront.

2 That's a very revealing text. First of all,
3 there's no way he's getting 10 percent with -- with
4 zero risk, but let's -- let's take it at face value.
5 What he's basically saying here to Mr. Roberts is,
6 hey, I'm taking this additional risk with these notes.
7 I need to get a higher yield for that. I can invest
8 I can get 10 percent with almost zero risk on these
9 hard money loans, I guess, is what he's talking about.

10 He's wanting higher yields because he needs
11 higher yields because of the higher risk he's taking.
12 That's what that text that text reveals.

13 Chuck says, understand. Hopefully, the next
14 round will be better.

15 June 7, 2021, Jannetti asks: Has the
16 pricing for notes changed at all? Chuck says, not
17 yet. Very little volatility.

18 Let's go to the next one. Okay. So he
19 understood that higher potential yields means higher
20 volatility, and therefore, higher risk. Mr. Jannetti
21 ratified his understanding of the risks.

22 Let's go to the next slide. Number one, he
23 gets an account statement every month for the
24 structured note account. This is June of '30 [sic].
25 It shows an unrealized loss of \$120,000.

HEARING
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January 24, 2025
201

1 Go to the next slide. This is September of
2 '20. It shows an unrealized loss of \$174,000.

3 Go to the next one. October of '20,
4 \$189,000 unrealized loss on the structured notes.

5 Go to the next one. July of 2021, \$854,000
6 of an unrealized loss.

7 Go to the next one. September '21,
8 1,059,000 unrealized loss.

9 Next one. November 2021, \$2.7 million
10 unrealized losses.

11 All right. Go back to the one before that.
12 He doesn't complain. He doesn't accuse Mr. Roberts of
13 misrepresenting the risks. This man came in here and
14 claims under oath he thought these had zero risk to
15 principal. He's looking at \$2.7 million in an
16 unrealized loss.

17 He doesn't call Mr. Roberts. He doesn't
18 accuse him of lying to him. And we're supposed to
19 believe that the reason he does it is because he's
20 worried about the guy? He feels sorry for him?

21 I mean, he doesn't accuse him of
22 misrepresenting the risk. He doesn't accuse him of
23 recommending unsuitable securities. He doesn't
24 complain about concentration in these securities for
25 which he's got a \$2.7 million unrealized loss. No.

HEARING
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January 24, 2025
202

1 No. He continues buying more structured notes. He's
2 down \$2.7 million at the end November, and he buys
3 more structured notes in December of 2021.

4 Next slide. He goes, if there's anything
5 that demonstrates his understanding of the risks and
6 his ratification of his comfort and willingness to
7 assume those risks, it's what he did with Palantir. I
8 mentioned this earlier. This is a chart that we put
9 together.

10 If you can -- can you make it any bigger at
11 all? I guess not. Minutes are precious, so -- thank
12 you.

13 This is Palantir. As you could see earlier,
14 there was some Palantir bought in the Solutions
15 account, but I want to focus your time period on
16 September 2021. First of all, September the 24th, he
17 buys the first Palantir note in the brokerage account,
18 \$4 million.

19 Price goes down pretty dramatically.
20 September 29, he buys \$200 grand -- invests \$200 grand
21 in the Palantir stock directly in the Solutions
22 account.

23 Price goes down again. October, he buys
24 Palantir, unsolicited, in the brokerage account. Two
25 hundred thousand dollars he puts into the stock at

HEARING
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January 24, 2025
203

1 that point after it's dropped.

2 November the 9th, the price ticks up just a
3 little bit, and he makes another unsolicited purchase
4 of Palantir in the broker's account, 200,000 more in
5 Palantir then.

6 And then on December the 3rd, after the
7 price has dropped again substantially, he puts another
8 \$1.5 million in another Palantir note. I guess he's
9 happy at this point because he's striking in the lows.

10 Palantir has dropped. So he puts \$6.1
11 million in the course of, really, two months in
12 Palantir stock and structured notes linked to Palantir
13 all while -- you know, we know he's following. You've
14 seen the text messages.

15 You know he's following the price of the
16 stock, dropping by 33 percent during this time period.
17 Now that shows you that the man is aggressive. That
18 shows you that he understands the risk. That shows
19 you that he's comfortable with the risk.

20 Let's go to the next slide. May of 2022.
21 This is when he sells his -- he gets his first margin
22 call, and he sells structured notes to meet the margin
23 call, and he incurs a \$2.2 million realized loss. Now
24 this is May of 2022. Not theoretical at this point.
25 2.2 million in realized losses to meet a margin call.

HEARING
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January 24, 2025
204

1 But he certainly knows the risk of margin at
2 this point. He certainly knows that there is risk to
3 principal on a structured note at this point. Does he
4 is there any evidence at all that he calls Mr. Roberts
5 or anyone else's at Stifel and accuses Mr. Roberts of
6 lying about structured notes, misrepresenting --
7 making unsuitable recommendations of structured notes,
8 making unsuitable recommendations of margin, overly
9 concentrating his account? Doesn't -- doesn't happen.
10 There's no evidence of it at all.

11 And what that proves is that Mr. Jannetti
12 knew all of that stuff. If he really thought that Mr.
13 Roberts had really led him to believe that there was
14 no risk to principal, if he really didn't understand
15 there was any risk using margin, the man would have
16 been going crazy after he incurred \$2 million-plus in
17 realized losses to meet margin calls. But we don't
18 see a single complaint at all.

19 In the face of all this evidence, his claim
20 that Mr. Roberts presented structured notes, which
21 were safe, little-to-no-risk to principal, or that he
22 thought they were super safe but little-to-no-risk to
23 principal, is not credible.

24 Now, how does he deal with this? We -- we
25 have this whole high risk argument. Structured notes

HEARING
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January 24, 2025
205

1 are high risk. Chuck didn't say they were high risk.
2 Well, if Mr. Jannetti thought they had zero risk --
3 zero risk to principal is what he said. Then what
4 difference does it make whether they got moderate
5 risk, moderate-high risk, higher risk, speculative
6 risk? He claims he bought it because he thought they
7 had no risk, and clearly, the evidence has disproven
8 that.

9 Whether something is high risk or not is
10 subjective. It's an opinion. It depends on many
11 factors. You can ask different people. You're going
12 to give different answers. Mr. Roberts gave different
13 answers in the first case than he testified in this
14 case after thinking about it. But he had a different
15 view. I can't explain it, but that's what he said.

16 But the bottom line is, it's stock market
17 risk. Some people think the stock market's high risk,
18 some people don't. It's stock market risk. It's as
19 simple as that.

20 But what does high risk mean? What's the
21 definition? I haven't seen one. Is it the chance
22 that you can lose principal? Well, that was
23 disclosed. He certainly understood that. Because
24 there's a chance that you could lose all your
25 principal, and that was disclosed. He certainly

HEARING
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January 24, 2025
206

1 understood that can happen.

2 Is it the chance that the underlying can
3 drop below the barrier, which means dropping in some
4 cases, 30 percent, 35 percent, 40 percent, well, that
5 was disclosed. You certainly understood that the
6 underlying could drop 30-40 percent.

7 Is it an indication of how likely it is that
8 the underlying will drop below the barrier? Well, who
9 knows how likely it's going to be? But one thing's
10 for sure. He understood that the higher yield was
11 because of the higher volatility. He understood that
12 the lower barrier was because of the higher
13 volatility.

14 And the prospectuses -- I showed you
15 several -- they show you the price history. He knows
16 how to pull it up on his phone. He sent screenshots
17 of price history on -- on individual stocks. He knows
18 how to look at the price history and see how volatile
19 it's been. He knows what the VIX is. He can look at
20 that prospectus and see how many times the price of
21 that underlying has dropped below that barrier. This
22 is not complicated.

23 And the rules and the law requires people to
24 disclose what the risks are, and they did that. I
25 haven't seen a single rule, law, notice to members, or

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
207

1 anything else put in front of you in this case that
2 requires putting some sort of risk label on. What
3 you're obligated to do is disclose what the risks are,
4 and we did that.

5 Indeed, the Claimants' counsel points out
6 repeatedly that not one of the prospectuses says that
7 the structured notes are high risk. Not one. So Mr.
8 Roberts sold these notes consistent with what the
9 prospectuses said. And there's no claim in this case
10 that the prospectuses were false or that they were
11 misleading or that they were not fair and balanced.

12 And there's no evidence of any action by a
13 regulator against any of the issuers for a false or
14 misleading prospectus because the prospectuses don't
15 use the words high risk. There's no evidence of any
16 class action against any issuer making that claim.
17 Zero.

18 The bottom line is that Stifel and Mr.
19 Roberts told Mr. Jannetti what the risks were -- what
20 the market risks were. He knew what they were. He
21 knew the risk that the underlying could drop below the
22 barrier, and he knew that a 15 percent potential
23 coupon and a 40 percent downside barrier had told him
24 that the underlying is volatile and that there's risk.

25 Now, let's go to the next slide. I don't

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
208

1 want to spend a ton of time on this, but he clearly
2 understood the coupon or the yield or whatever you
3 want to call it was contingent. We told it to him in
4 writing. It's in the same disclosures that we covered
5 before. It's in the account agreement. It's in the
6 structured investment disclosure, income risk, and
7 it's in the white paper.

8 And I won't take the time to put that back
9 up there and highlight it again, but that document
10 says the potential for an inch yield in the form of a
11 contingent coupon. Then it shows what the contingent
12 coupon is.

13 Coupon frequency, quarterly. Coupon payment
14 is contingent on the performance of the reference
15 asset.

16 Payout schedule. If the closing level of
17 any of the referenced assets is less than the coupon
18 barrier, no coupon payment will be made. It tells him
19 right there.

20 Next slide. It tells him in the portfolio
21 review that Mr. Connolly sent him next to every single
22 structured note that he had just bought. The product
23 offers a quarterly coupon as long as each underlying
24 is greater than or equal to 70 percent of its
25 respective initial level. Otherwise, no coupon is

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
209

1 paid for that period.

2 Next slide. Now, it tells him in the
3 prospectuses. First half of the first page tells him
4 that the coupon is contingent. And I won't go through
5 this again. But if this doesn't prove that he knew
6 the coupon or yield or income or whatever you want to
7 call it is contingent, I don't know what -- what does.

8 Let's look at his testimony. Did Chuck tell
9 you that the yield payment was guaranteed? That you'd
10 get it every time without exception ever? You'd
11 always get it? Did he tell you that?

12 He inferred it. I asked you, did he tell
13 you that? No. That's the reason that you tracked the
14 price of the underlying relative to the barrier so
15 that you could keep up with whether the yield payment
16 would be paid, correct? That's fair. That was his
17 testimony.

18 Let's go to the next slide. Mr. Jannetti
19 understood that yield meant coupon, and the evidence
20 proves that he and Mr. Roberts and Mr. Roberts's team
21 used the terms yield, coupon, interest
22 interchangeably. Let's go through the -- the
23 testimony.

24 Mr. Connolly sends you an email: Please find
25 today's structured notes. See that? I do. And he

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
210

1 gives you the list with the CUSIP, the issuer, trade
2 date, maturity, note name, coupon. See that? Yes, I
3 do. You see the column heading coupon? Yes. You
4 understood that to be the yield, right? Yes.

5 Next slide. His testimony: Email from you
6 to Tyler, November of '19. I just invested 1 million
7 in the latest round -- last round of structured notes.
8 Can you please convey the strike prices and final
9 interest rate for my investment? You see that? Yes.
10 When you referenced interest rate, you meant the
11 coupon or the yield, right? I believe so.

12 Next slide. Let's look at some emails.
13 From Jannetti: Can you please confirm that the coupon
14 and principal barrier rates are the same?

15 Tyler answers -- go to the next slide.
16 Here's -- go to the next slide, please.

17 Here's Jannetti's email to Tyler: I just
18 sent the following in a text to Chuck but haven't
19 heard back. It's only been ten minutes, but I wanted
20 to cover my bases. Please invest in the following:
21 1.3 million in the BAML, 13 yields. Here he's using
22 the word yield.

23 Go to the next slide. Can someone please
24 call and give me yields?

25 Go to the next slide. One more thing. Can

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
211

1 you please send the final coupon pricing? Now he's
2 using the word coupon.

3 Go to the next slide. Down at the bottom,
4 he's asking about the final interest rate for his
5 structured note investment. And Mr. Tyler Connolly
6 responds and gives him the coupon rate.

7 Go to the next slide. Here's his testimony:
8 When he used -- when he and his team used the word
9 yield with you, you understood they were referring to
10 the contingent coupon in the note; isn't that correct?

11 I didn't know contingent coupon, but I
12 understood that the yield was contingent upon a
13 barrier, right. That's Mr. Jannetti's testimony under
14 oath.

15 What's the next one?

16 CHAIRPERSON SALIS: Thank you.

17 MR. HILLIS: And I don't have a slide on
18 this one. But during his direct examination, Mr. Erez
19 asked Mr. Jannetti this question. This is Volume
20 VIII, Page 1,459, Line 25. Were you aware that the
21 contingent coupons were going down on the ETFs and on
22 the sectors and the indices and that Mr. Roberts was
23 including single stock notes to get a higher
24 contingent coupon?

25 And Mr. Jannetti says, yes.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
212

1 Even Claimants' expert admitted that Mr.
2 Jannetti understood that the coupon or yield was
3 contingent. I asked him: Regardless of whether the
4 word coupon was used, yield, or interest rate, you
5 don't have any doubt that Mr. Jannetti knew that that
6 that was contingent on the performance of the
7 underlying security; isn't that correct?

8 Generally speaking, yes.

9 That's why he kept the spreadsheet, the live
10 spreadsheet, so that he could keep track on a daily
11 basis whether the underlying price was below or above
12 the barrier and, therefore, whether he would expect to
13 get a coupon; isn't that correct?

14 And Mr. Heller says, That is correct.

15 So why in the world do we waste so much time
16 in this hearing on Mr. Roberts's use of the word yield
17 in text to Mr. Jannetti and in text to other clients
18 and structured note allocation sheets that Mr.
19 Jannetti asked for and Mr. Roberts sent?

20 The evidence is undisputed that Mr. Jannetti
21 was not misled by the use of the word yield. He knew
22 it was the contingent coupon. He knew it was not the
23 final effective yield, which you can only know at the
24 end of the two-year maturity. He knew the yield or
25 the coupon or the interest rate or whatever else you

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
213

1 want to call it was contingent on the price of the
2 underlying being above the barrier.

3 Here's a big question. Mr. Jannetti claims
4 he had no structured note experience, and there's no
5 evidence that he did. He claims he never read any of
6 the disclosure documents. Never looked at a single
7 one. That's what he said. Claims he never did any of
8 his own homework.

9 Even though we have a text messages where
10 he's looking at the underlyings and saying I'm
11 analyzing the notes. That was a joke. So he never
12 did us any of his own homework, never -- never dug
13 into the details, just claims he trusted Chuck.

14 If that's true -- which it isn't, but let's
15 suppose it is -- how -- how does Mr. Jannetti know the
16 coupon's contingent and dependent upon the performance
17 of an underlying?

18 How does he know about the principal barrier
19 that he emailed about? How does he know that if the
20 underlying drops below the barrier, you don't get a
21 coupon and you can lose principal? How did he know in
22 late 2021 that a structured note was going to mature
23 not in the money? How did he know that the higher the
24 volatility, the higher the risk, means the higher the
25 risk, the higher the coupon, higher the yield. How

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
214

1 did he know all that?

2 How did he understand the risks enough to
3 create a live spreadsheet so he could track the
4 market's risk every day? Maybe Mr. Roberts actually
5 did spend hours talking to Mr. Jannetti, the three to
6 four hours that he joked about on Christmas Day.
7 Maybe Mr. Roberts did explain these notes to him.

8 And if he explained them to Mr. Jannetti,
9 maybe he explained them to all these other people that
10 Mr. Roberts sent text to that they want to obsess
11 about --

12 Let me move to the suitability-related
13 claim. And I think there -- there really is one
14 oh, well, I guess, three -- three key questions here.
15 Were the structured notes and stocks consistent with
16 Mr. Jannetti's investment objective and risk
17 tolerance? Was his account too concentrated? And did
18 Mr. Roberts recommend that? Was that suitable? And
19 did Mr. Roberts recommend excessive use of leverage
20 and was that -- those are really the three issues.

21 If we go to the next slide, the evidence has
22 proven that Mr. Jannetti aggressively sought higher
23 returns, the highest potential yield, was willing to
24 assume higher risks to get those higher yields and
25 returns, and he drove the concentration. And his

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
215

1 claim that he wanted safety and to protect his
2 principal and would not have invested in a high risk
3 or aggressive strategy is just not supported by the
4 evidence, and it's not true.

5 Let's go to the next slide. Again, I want
6 to blow through these a little bit quicker. He had
7 accounts at Merrill and U.S. Trust.

8 He testified here: So Mr. -- Erez asked
9 him, Before we get into this, you have an account at
10 Merrill and an account at U.S. Trust. Why are you
11 splitting it like that? I didn't want to put all my
12 eggs in one basket.

13 He understands diversification. He
14 understands risk when you concentrate, when you put
15 all your eggs in one basket.

16 Go to the next slide. He testified about
17 his accounts with -- with Merrill. He's just sold his
18 business. I wanted a conservative portfolio. I
19 wanted something that's secure and diversified. I
20 don't have to worry about it.

21 Is this not worrying about it? Is -- is
22 this an investment, this right here, that he's not
23 worried about? No. No.

24 I want something secure, diversified. I
25 don't want to have to worry about it. So basically --

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
216

1 so he put me in -- mostly, he put me in a, I mean, a
2 broad mix.

3 Go to the next slide. And I'm going to blow
4 through these, but the Merrill account was very
5 diversified.

6 Look at the next page. Fixed income, 71
7 percent. Seventy-four percent of that is in long term
8 bonds, nineteen percent in cash, nine point seven four
9 percent in equities.

10 Next slide. This is The U.S. Trust account,
11 also very diversified. Cash, equities, fixed income,
12 private equity. Cash is 4 percent. Equities, almost
13 80 percent. Sixty-eight percent of that is large
14 cap. And you see the fixed income and the other
15 investments there.

16 So he's got two accounts with these other
17 firms, diversified, conservative, a broad mix. Not
18 what he wanted. Not what he wanted. Considered it to
19 be bullshit, the slide we covered earlier.

20 U.S. Trust just lets crappy investments
21 wither on the vine. I just freed up about 2 and a
22 half million of bullshit investments I'm going to move
23 over soon. He wanted higher yields. That's why he
24 consolidated.

25 Go to the next slide. Now we've gone over

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
217

1 this before. I won't do it in detail. But Mr.
2 Roberts recommended a more diversified portfolio.
3 This is critically important. It reflects his true
4 investment objectives and risk tolerance. It's
5 relevant to the concentration. It's critically
6 important to that. It's critically important to the
7 claim on the Solutions account.

8 Mr. Roberts recommended a more diversified
9 portfolio at least five different times. Initially,
10 he testified in February of 2020 that he went over all
11 of his investment buckets with Mr. Jannetti, all the
12 components of the strategic allocation approach. And
13 Mr. Jannetti only wanted structured notes at that
14 point.

15 December the 4th, 2020, Mr. Roberts sends
16 him a proposal for two ETF proposals, tactical
17 allocation and a broad based allocation. Those are
18 two components of the strategic allocation portfolio.
19 Mr. Robert sends that to Mr. Jannetti. He rejects it.

20 December the 7th, 2020, Mr. Robert sends it
21 to him again. Rejects it again.

22 Let's go to July 20, 2020. Went through
23 this earlier. Mr. Jannetti -- I mean, Mr. Roberts
24 sends him most of the components of the strategic
25 allocation model, mutual fund managers, ETF

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
218

1 allocations, broad based ETFs and sector ETFs,
2 dividend paying stocks or dogs of the doubt,
3 alternatives, closed end funds.

4 Sent it to him again on August 2021.
5 Revised, but basically the same proposal. Mr.
6 Jannetti rejected it both times. So he complains
7 about concentration, and yet Mr. Roberts is the one
8 trying to get him to diversify the account, and he
9 rejects it every single time.

10 He wanted to continue to concentrate in
11 structured notes and high growth stocks. He knew he
12 was taking more risk by being less diversified. It
13 shows he was aggressive. It shows he's not an
14 investor seeking safety or to preserve principal, and
15 it proves that Mr. Roberts didn't recommend the
16 concentration about which he now complains. He tried
17 to get him to diversify, and he wouldn't.

18 His other investments also show a tendency
19 to -- to concentrate. He put \$7.6 million in five
20 speculative private equity deals, three at Stifel,
21 Braven, which had nothing to do with Stifel, and at
22 least one other outside Stifel private investment.

23 And each of those, he represented, he
24 understood they were speculative. He invested 4 to
25 \$500,000 in cryptocurrency. He concentrated \$7

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
219

1 million in one spec real estate deal with Larry Caine.
2 Hard money lending, private lending, lending to
3 individuals at rates in excess of 10 percent when
4 traditional mortgage rates are below 3 percent,
5 investing directly in a pool of residential
6 mortgages -- all of these things are very risky.

7 This is not a man looking for safety. Not a
8 guy looking to preserve principal. In his
9 communications with Mr. Roberts and his trading
10 decisions, including the unsolicited trades that he
11 made in both accounts, show that he was aggressive,
12 not risk averse, not someone looking for safety.

13 Let's look at some of his text messages.
14 I'm totally fine with the volatility. Short American
15 Airlines, it's up 78 percent. He's suggesting
16 shorting American Airlines. Markets are down
17 significantly. Do you have a recommended buy before
18 the close of business? So prices are dropping, and
19 he's wanting to buy.

20 I hope they keep tanking until price are
21 struck Friday.

22 Go to the next one. Market seems beaten
23 down a bunch. That means prices have dropped, which
24 he understands. Good time to invest? Perhaps we
25 should move a million into the equity account and buy

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
220

1 more now.

2 Next slide. Portfolio -- this is really
3 interesting. Portfolio went from low of 12 percent
4 down to 17 percent up in the last month. Now that's a
5 29 percent change in one month, 29 percent. That's
6 not safe, conservative, low risk. That's pretty
7 volatile. He says, She's a keeper. He likes it.

8 The stock has been bouncing around. Check
9 out the last week volatility. Let's wait a couple of
10 days to see how things shake out and then invest.

11 Next slide. Hey, Chuck. Can you please buy
12 200,000 of RV and Revance, I think it is, at the open
13 provided you buy it under \$26.5 a share? I think I
14 can make a pretty quick 20 percent. Let's wait until
15 they take a 10 percent hit. I like investing in the
16 dips.

17 What do you think of my decision to buy
18 Silvergate Capital back on September 21 at 104? Let's
19 sell it. I only wanted to make a quick 10 percent. I
20 don't want to be greedy, and I'd still have 500,000 in
21 Silvergate after the sale. We can buy something else
22 when the opportunity presents itself.

23 Chuck, December '21: The world ain't going
24 to zero, thank God. We'll look back in six months and
25 realize this downturn was just one big damn head fake.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
221

1 Now, he was certainly wrong about that.

2 But what does Jannetti say? Well, that's my
3 hope and why I invested today. Market is down. Is he
4 running from the market, running from the risk? No,
5 no, he's investing more.

6 Next slide. These are not statements and
7 actions of a conservative investor. Those are
8 statements and actions of an aggressive investor, what
9 he was. He also drove the concentration within
10 structured notes and those with the highest potential
11 yield, including the single stock notes.

12 Remember that Mr. Roberts always sent a menu
13 of notes. This is one example right here that was
14 sent in October of 2021. Large market indices notes
15 like the NAS -- I'm sorry -- NASDAQ, Dow, S&P, sector
16 index notes starting in June, single stock notes with
17 relatively small allocations.

18 Let's look at the next slide. Mr. Roberts's
19 testimony: More than 95 percent of my clients would
20 take our broad allocation, diversified allocation.

21 Next slide. Mr. Roberts's testimony: But
22 not Mr. Jannetti. I've had an enormous dialogue with
23 Mr. Jannetti. We would go through the notes. He was
24 never satisfied with the lower contingent coupon
25 notes. Never. He wanted the highest contingent

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
222

1 coupon, which you'll see going forward. That's what
2 he wanted. And so to bring up the average yield, the
3 only way you can do that is to cherry-pick. That's
4 it.

5 Next slide. All right. This is his
6 testimony: Did you recall being dissatisfied with the
7 yields of structured notes he was offering in June of
8 twenty one? You recall that, correct?

9 I was mostly drawn to hirer yields.

10 And you would agree with me, sir, that there
11 were times when you would not purchase all the notes
12 in Mr. Roberts's menu?

13 That's correct.

14 Let's go to the next slide. He says,
15 Looking at the notes now, which is your fav? No
16 politically correct comments, like, sprinkle across
17 the board, please. That shows you what Mr. -- what
18 Mr. Roberts tried to get him to do, diversifying
19 across the entire menu. Do you want to do it?
20 Excellent.

21 Each time Mr. Roberts would send him a menu,
22 each time Mr. Jannetti would look at those
23 underlyings -- this is one example. He sends a
24 screenshot to Mr. Roberts. Starting to analyze the
25 notes. How does he explain this away? It was just a

HEARING
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January 24, 2025
223

1 joke. It was just a joke. I didn't really look at
2 it. He did his own homework.

3 Go to the next slide, please.

4 CHAIRPERSON SALIS: Mr. Hillis, is this a
5 good time?

6 MR. HILLIS: Sure. We're at 3:26.

7 (OFF THE RECORD)

8 (ON THE RECORD)

9 CHAIRPERSON SALIS: We cannot say later than
10 5:00. So I think we need to coordinate something to
11 continue here or on Zoom. But it's --

12 MR. HILLIS: I think we'll finish by 5:00.

13 CHAIRPERSON SALIS: You think you will?

14 MR. HILLIS: Yeah.

15 MR. EREZ: He's got fifteen more minutes --

16 MR. HILLIS: No, no. I've got 24 minutes
17 according to my watch.

18 CHAIRPERSON SALIS: Nine minutes short.

19 MR. EREZ: Okay. Twenty-four minute --

20 MR. HILLIS: Come on, man.

21 MR. EREZ: -- and then I'll go.

22 CHAIRPERSON SALIS: Okay. Then let's
23 proceed. That's wonderful to hear.

24 MR. EREZ: I've got 3:36.

25 MR. HILLIS: Six, is that right?

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
224

1 MR. EREZ: Yeah.

2 MR. HILLIS: Okay. All right. So, again,
3 every month, Mr. Roberts makes a recommendation of a
4 menu. This is the one in October. He recommends
5 approximately ten or more notes. What does Mr.
6 Jannetti do every single month? He picks the ones
7 with the highest shield. He decides how much to
8 invest.

9 He sends text after text, email after email,
10 giving specific instructions on which note he wants
11 and how much to invest. I'm not going to go through
12 those, but they're in your demonstration and behind
13 Tab 2 in the demonstratives of the closing binder.

14 In this particular case, he recommends
15 several -- ten-plus notes. Mr. Jannetti decides to
16 buy Dynatrace and Square, two out of the menu that was
17 put there.

18 Now this is a critically important point.
19 Mr. Roberts had no financial incentive to concentrate
20 Mr. Roberts in Dynatrace. No financial incentive at
21 all. He would have gotten the same -- he got paid the
22 same thing had Mr. Jannetti invested that \$6 million
23 across all these notes. It doesn't benefit Mr.
24 Roberts financially for him to concentrate it in the
25 Dynatrace note or any other note with the highest

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
225

1 yield.

2 Mr. Jannetti didn't need a concentration
3 letter to tell him he was concentrated. Look at slide
4 197. This is his testimony: After the phone call with
5 Mr. Stevenson and Ms. Lucarelli, you know that your
6 account continued to be concentrated in structured
7 notes, right? Yes. You knew that from that point
8 until the very end, correct?

9 What does that mean? I don't know what you
10 mean. Until the very end of the relationship, you
11 knew that your account was concentrated in structured
12 notes, correct? I knew I had a lot of structured
13 notes as far as concentration.

14 You knew that structured notes represented
15 virtually a percent of this account, correct, of the
16 structured note account?

17 Yes, sir. I understood that structured
18 notes and the structure in my structured note account,
19 there were -- it was a 100 percent structured notes.
20 Yes. So he understood that.

21 Leverage and withdrawals -- let me just talk
22 about that briefly. Again, the evidence has proven
23 that he's experienced with debt as a lender and a
24 borrower. He brought up the mortgages and margin to
25 Mr. Roberts first. He drove the use of margin.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
226

1 There's text message and email after text message
2 after email telling Mr. Roberts's team to use margin.

3 Those are also behind Tab 2 in the
4 demonstratives that we used in opening. I'm not going
5 to go through them now, but there's plenty of evidence
6 Mr. Jannetti that drove the use of margin. Every time
7 he gave instructions to Chuck's team to use margin, to
8 fund withdrawals, to fund capital fall, he drove.

9 And it was his decision to withdraw \$12
10 million from the account, much of that on margin. His
11 decision to withdraw 6 million from the account in
12 2022, and those are -- those were withdrawals
13 attributed mightily to the margin calls that he got.

14 And the clearest example that he was in
15 control of leverage and drove that aggressive approach
16 is -- is the December '21 through February 2022 time
17 period. His accounts dropped \$10 million during that
18 time period.

19 He added \$2.1 million in margin debt for the
20 down payment on the Sunset Harbor House. He added a
21 \$9 million mortgage on that property, \$11 million in
22 new debt with his Stifel accounts down \$10 million.
23 Mr. Roberts didn't recommend that strategy. It shows
24 you how aggressive he is and how he's the one driving
25 the leverage.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
227

1 Now let me talk briefly about supervision.
2 You don't get to supervision unless they prove an
3 underlying claim. Okay? That's -- that's clear. The
4 evidence we believe has proven that Stifel's
5 supervision was reasonable. You've seen the policies
6 and procedures, which no one has criticized. They
7 provided education and training on structured notes.
8 They have eligibility criteria for claim -- for
9 customers to invest in structured notes. They have
10 parameters and guidelines on the types of notes that
11 can be offered, implied volatility limits, and other
12 things.

13 Mr. -- Ms. Lucarelli testified about her
14 supervision, her review of branch scorecards, her two
15 year heightened supervision plan with Mr. Roberts
16 where she met with him monthly and had heightened
17 scrutiny, central supervision reviewing every single
18 structured note trade, two manager calls. There's
19 plenty of evidence in this case of reasonable
20 supervision.

21 And Ms. Lucarelli is highly experienced,
22 highly credentialed. She obviously cares about her
23 job. She obviously takes it serious. She's a serious
24 person, and she does her best to protect the firm and
25 to protect clients.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
228

1 Now, is the supervision perfect? Of course
2 not. It never is, but perfection is not the standard.
3 Reasonableness is the standard. You have to have
4 reasonable policies, policies reasonably designed to
5 prevent violations, and you have to reasonably follow
6 those policies.

7 You can't catch everything. You can't be
8 perfect. You can still have reasonable policies and
9 supervision and still have customers lose money and
10 have customer claims. Just ask Mr. Heller. He's --
11 he's supposedly one of these great supervisors at UBS.
12 He has customer claims on his -- his CRD as a
13 supervisor.

14 The concentration -- let me talk about that
15 briefly. You know, Ms. Lucarelli made a judgment.
16 Now, you may disagree with her. And it's certainly
17 easy in hindsight to look back and say, well, gosh,
18 you know, she should've sent that letter. And if she
19 was only focused on protecting Stifel -- she was just
20 worried about Stifel's butt, then she would've said
21 it.

22 What's the downside, right? But she didn't
23 send it. She made a judgment because she had just
24 talked to Mr. Jannetti a few months before when the
25 account was more concentrated in structured notes than

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
229

1 it was at the time they were looking at the
2 concentration letter.

3 You -- you may disagree and say that she
4 should have said it. But just because she makes a
5 judgment we disagree with now in hindsight, doesn't
6 mean that it was a lack of supervision, doesn't mean
7 that it was unreasonable supervision. She made a
8 judgment. She had just spoken to the guy a couple of
9 months earlier. That's not a proof of lack of
10 supervision.

11 Now, I want to talk about comparative
12 negligence, which is the law in Florida, 768.81, which
13 basically says that you can reduce any amount of
14 alleged losses proportionate to the amount of fault
15 that you find with Mr. Jannetti.

16 So if his fault caused some portion of the
17 loss, you are entitled to a portion of damages based
18 upon that. And if you find that his conduct was more
19 than 50 percent at fault for the losses, then you can
20 award zero damages.

21 And the evidence has proven only a fault on
22 Mr. Jannetti's part. If you believe him, he admits he
23 didn't read the structured investments disclosure, the
24 white paper, the portfolio review, the account
25 agreement, the margin disclosures, the prospectuses,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
230

1 all of which disclose all the risks that he claims
2 weren't disclosed and that he didn't know.

3 He drove the concentration. He rejected Mr.
4 Roberts's recommendations to diversify the account.
5 He drove the leverage. He committed to these outside
6 private deals, which created the liquidity crisis that
7 he found himself in. He chose to withdraw 12 million
8 from the account, which led to the margin calls and
9 forced sales.

10 He chose to withdraw the 6 million in 2022.
11 The evidence has proven that he is largely responsible
12 for the losses in this count -- in this case, and the
13 law requires you to reduce any recovery proportionate
14 to his own fault.

15 Now, let me talk a little bit about his
16 damages. We don't think he's proven his claims, but I
17 have to say a few things about damages. Benefit of
18 the bargain. On structured notes, that damage theory
19 assumes that the Claimant had invested in an
20 investment with zero risk to principal and a
21 guaranteed return of 12.25 percent. That's absurd.

22 He knew that there was no such investment
23 like that. He knew the coupon was not guaranteed, was
24 contingent, and he knew there was a risk to principal.
25 I just went through all that stuff. So a benefit of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
231

1 bargain damages based upon a guaranteed return of
2 12.25 percent on an investment with no risk is simply
3 not appropriate.

4 Solutions account -- he uses -- he bases
5 that damage on the benchmark for the strategic
6 allocation portfolio as described in 2017. But as
7 I've demonstrated to you, that is not what Mr.
8 Jannetti wanted. It is not what he expected, and you
9 can't base damages on a theoretical portfolio that the
10 evidence proves he did not want.

11 517 damages. Now, we don't think they've
12 proven 517. But even if they have, the damages --
13 their damages calculation ignores the structured notes
14 and the stocks that made money. But he argues that
15 netting is not permitted. We disagree with that.

16 The KC cites is dealing with two
17 transactions. The Plaintiff was complaining about
18 one, and the Defendant claimed that you have to offset
19 the gain on the other. That's not this case, and we
20 cite law in our hearing brief.

21 When you're complaining about the entire
22 strategy, which is exactly what this case is about,
23 they're not complaining about four notes, five notes.
24 They're not complaining about five stocks in the
25 Solutions account. Their complaint is about the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
232

1 entire strategy.

2 And when your complaint is about the entire
3 strategy, you should look at the entire performance of
4 the account. You should net the gains against the
5 losses because you're complaining about the whole
6 strategy. We cite case law in our brief on that
7 point.

8 Attorney's fees -- maybe I've forgotten.
9 It's been a long hearing. I don't remember any
10 evidence of any attorney's fees. I don't remember
11 seeing any evidence of attorney's fees. I don't
12 remember seeing a contingent fee agreement. I don't
13 remember seeing any evidence of cost -- cost. I don't
14 remember seeing a single thing.

15 Punitive damages. They seek punitives on
16 their breach of fiduciary duty and fraud claim.
17 That's it. They don't seek punitives on any of the
18 other claims, and you can't hit punitives on any of
19 the other claims.

20 Fraud, breach of fiduciary duty. Fraud
21 requires proof of contempt to defraud, all the other
22 elements that we talked about. Punitive damages are
23 recovered for truly culpable behavior and intended to
24 express society's collective outrage. They're
25 required to prove that the Defendant's conduct was

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
233

1 outrageous due to defendant's evil motive or reckless
2 indifference to the rights of others. We cite that in
3 our hearing brief.

4 The statute is very clear if you look at it.
5 When you're seeking punitive damages against an
6 employer -- employer for the acts of the employee, you
7 have to prove -- essentially, they have to prove by
8 clear and convincing evidence that Mr. Roberts knew
9 his structured note and strategies and recommendations
10 were wrongful, knew it. Would -- knew it would cause
11 the Claimants harm and intentionally made the
12 recommendations to the Claimants anyway.

13 If you track the language of the statute,
14 that's what they have to prove. And that he was so
15 reckless in wanting and care that he had a conscious
16 indifference to the Claimants' rights, life, and
17 safety. In other words, they have to prove that he
18 made the recommendations knowing he would harm the
19 Claimants, and he made the recommendations anyway.

20 For he made them so grossly -- he was so
21 reckless, so grossly negligent that he didn't care if
22 his recommendations harm Mr. Jannetti. I think
23 there's just no evidence in this case to support that.
24 Yes, his recommendations did not perform because we
25 had one of the worst markets in decades, but there's

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
234

1 no evidence that he made these recommendations with an
2 intent to defraud him, knowing that it would harm him,
3 didn't care if it would harm him. That is not what
4 has been proven in this case.

5 And then on the second element, they have to
6 prove his people actively, knowingly participated in
7 such wrongdoing by Mr. Roberts, that we condoned it,
8 ratified it, consented to it, and that we were grossly
9 negligent, and it caused his loss. There's no
10 evidence that Stifel knew or participated in or
11 condoned or ratified a broker making recommendations
12 knowing they would harm the Claimants and made them
13 anyway. There's just no evidence of that.

14 And I got to say this about punitives. You
15 can't get punitive damages just because Stifel is
16 defending on these cases. And, you know, we -- we
17 tried to offer some evidence yesterday through our
18 expert to defend Stifel's handling of these cases and
19 Mr. Roberts in light of these cases. And we drew an
20 objection, and that objection was sustained. And we
21 were not permitted to put that evidence on.

22 And I told you that he would make the
23 argument that he made: that you should award punitive
24 damages because Stifel doesn't take it seriously; they
25 haven't done anything to Mr. Roberts; he's still

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
235

1 employed; they haven't disciplined him other than a
2 height supervision plan. And we were not permitted to
3 put the evidence in through our expert on the
4 reasonableness of Stifel's conduct.

5 But Stifel is not required to terminate Mr.
6 Roberts simply because Mr. Erez files a bunch of
7 claims. We are entitled to defend. We don't agree
8 with the allegations. We dispute the claims. That's
9 why we're trying this case. Punitive damages can't be
10 based upon that. We're entitled to put on a defense.
11 We don't have to agree simply because he files a
12 number of statement of claims with allegations. We
13 are entitled to dispute it.

14 So let me just say in conclusion, based on
15 all the evidence, we -- we think you should dismiss
16 this case. We think you should hold him responsible
17 for his financial decisions and conduct which drove
18 the losses in this case. Hold him responsible for his
19 decisions to concentrate in structured notes against
20 Mr. Roberts's advice.

21 He concentrated the notes with the highest
22 yield against Mr. Roberts's advice, for rejecting Mr.
23 Roberts's recommendations to diversify, for
24 overcommitting himself to these outside private deals,
25 for over leveraging himself and making huge

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
236

1 withdrawals that exacerbated the margin situation.
2 Don't let him shift to Stifel market risk that he
3 understood and that he chose to assume chasing higher
4 returns.

5 And we also ask that you give us our
6 attorney's fees. And I'll put in an affidavit showing
7 the proof of that of a million 7 in attorney's fees
8 and cost. Now, I'm not stupid. You -- you may
9 disagree with me. He's told you a number of times.
10 We've had two awards. You may disagree with me. And
11 if you do, I still urge you to hold Mr. Jannetti
12 responsible for his culpability, for his share of the
13 fall in this case.

14 You can do that under comparative
15 negligence, comparative fault. You could do it just
16 to enter a fair and just award in the case. Is it
17 fair and just after all the evidence I've reviewed for
18 you for him to get all of his money back or more? No.
19 We ask you to enter a result that is fair, just, given
20 all of the facts of this case only, no other case, of
21 a result that holds him responsible for his losses,
22 for his -- his share of the fault.

23 And I would suggest to you that all the
24 losses on the single stocks are his responsibility.
25 That's \$9.5 million all on him. He's the one that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
237

1 concentrated in those single stocks. He's the one
2 that rejected Mr. Roberts's recommendation of a
3 diversified menu. He made that decision. He made the
4 decision to put \$6 million in Dynatrace. That wasn't
5 Mr. Roberts's recommendation. You saw his
6 recommendation, a menu of ten notes with relatively
7 small allocations to the single stocks. He made that
8 decision.

9 The losses on the other stock -- on the
10 other notes, three and a half million dollars. And
11 you can apportion that between Stifel and Mr. Jannetti
12 based upon what you -- what you see as the share of
13 the fall.

14 If you're concerned about the margin, as we
15 proved, the fact that he had margin and had to sell
16 structured notes to meet margin calls caused only 2
17 million. That was it. You can apportion that based
18 upon relative fault between Stifel and Mr. Jannetti.

19 You can look at December of 2021. Between
20 October -- the end October and December 2021, Mr.
21 Jannetti's accounts dropped \$7.5 million in less than
22 3 months. His unrealized loss at the December on
23 structured notes, in that account, just the ones, he
24 held, \$4.3 million.

25 That's the last month he bought anything.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
238

1 It's the first month the coupons were missed on
2 structured debt. Before he did the Sunset Harbor deal
3 and added 2.1 million in margin debt. It's before he
4 withdraws 6 million in 2022.

5 If you -- you can look at December of 2021
6 he had sold everything at the December 2021, all the
7 structured notes he held. His overall NOP on the
8 structured notes as of that time was \$1.725 million.
9 So if he sells all the notes at the end of December of
10 2021, that's his structured note overall loss from
11 start to finish, \$1.725 million, and you can apportion
12 that number according to the relative fault.

13 And that doesn't even include the fact that
14 at the December, his Solutions account was up 635,000.
15 Not even including that. If you take both accounts
16 into account and say that he liquidated everything at
17 the December of 2021, his total NOP, at that point, a
18 loss of a million and one.

19 So this is not a zero or 20 or 16 million or
20 26 million -- or whatever the number is -- case. You
21 are entitled to a portion of the laws according to the
22 relative fault, and you are entitled to end result in
23 an award that's fair and just based upon the fact of
24 this case.

25 I want to, thank the panel for listening to

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
239

1 me for almost three hours. I appreciate your
2 attention. I appreciate how serious you took your
3 jobs in the case, how respectful you were to me and
4 our team, and frankly, to both sides. These are not
5 easy cases. The lawyers are fierce advocates.

6 I hope that I didn't do anything during the
7 case that crossed any particular line. I'm doing the
8 best I can, fighting as hard as I can for my clients.
9 I know you -- you all understand that. So I just want
10 to thank the panel for serving on this case and for
11 your attention. Thank you.

12 CHAIRPERSON SALIS: You need a moment?

13 MR. EREZ: I don't. No. (Inaudible).

14 MR. HILLIS: I want it noted that I had one
15 more minute.

16 CLAIMANTS' REBUTTAL STATEMENT

17 MR. EREZ: Okay. Thank you, Mr. Hillis.

18 Comparative fault. No comparative fault
19 under Florida Statute 517. That's the law. No
20 comparative fault, no defense, no ratification, no
21 apportionment. No apportionment of fault under
22 intentional tort, breach of fiduciary duty, fraud.
23 No apportionment of fault.

24 So everything he just said does not apply to
25 517. 517 has a formula. You meet the statutory

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
240

1 requirements. You get recessionary damages. I just
2 want to address that off the bat, and I'm going to go
3 quickly through the various items that Mr. Hillis
4 mentioned because I want to start with the first
5 thing.

6 Mr. Hillis's closing just gutted the entire
7 securities industry. He literally said out loud, it
8 doesn't matter what the risk is. He literally said
9 that on behalf of the seventh largest brokerage firm
10 in the country. He literally eviscerated the entire
11 industry.

12 This is their manual. You have to record
13 your client's objectives, conservative, moderately
14 conservative, moderate, moderate growth, moderately
15 aggressive, aggressive, know your customer,
16 suitability.

17 What are all these rules based on? You
18 understand your client and the levels of risk, and you
19 understand the product and the levels of risk, and you
20 match them. That's the entire securities industry.
21 That is the FA, the financial advisor's entire
22 obligation. That is the nuts and bolts of this
23 industry.

24 What did Mr. Hillis not address at all in
25 three hours? The elephant in the room, the change of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
241

1 testimony, the intentional manipulation of testimony
2 and proof in this case, which I've proven previously,
3 not high risk, in this case, high risk because the
4 level of risk -- not just, we disclosed a risk; we
5 disclosed this risk -- it's the level of risk that
6 matters.

7 And that level of risk, as you've all seen
8 in every single new account form, every single manual
9 that's ever been written in the securities industry,
10 is all about the calibration of the level of risk
11 because the broker has to know how much risk does this
12 client want to take.

13 He has to understand the precise level of
14 risk, low, moderate, high, somewhere in between.
15 They've got five different levels here at Stifel, and
16 then he's got to match it with the client.

17 If what Mr. Hillis was saying was true, it
18 wouldn't matter what the level of risk the client had,
19 risk tolerance, or the level of risk of the product.
20 Everything he just told you is not supported. They
21 did not put on a single expert witness that supported
22 what he just said in his closing argument, that the
23 level of risk doesn't matter.

24 This entire case is about Mr. Roberts's
25 misunderstanding the level of risk, presenting this as

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
242

1 solid, very solid, super solid. That's not puffery.
2 Those are precise representation communicating the
3 level of risk.

4 I asked Mr. Roberts, what do you mean by
5 that? I believe you're going to get your coupons and
6 you're going to get your money back in maturity. We
7 saw all those text messages, not risky, almost like a
8 substitution for bonds, you know, the more structured
9 notes you have, the more conservative you are. So his
10 \$28 million in structured notes, he believed that was
11 conservative.

12 According to Mr. Rob -- Mr. Hillis in
13 Stifel's closing, it doesn't matter what the level of
14 risk was. That can never be the case. These were
15 high risk note. And you know how you know that Stifel
16 knows how critical that is? Because they changed
17 their entire testimony. They changed it in this case.

18 In their answer, they said high risk. In
19 previous cases, high risk. And then in this case,
20 it's not high risk. Why did they do that? Why did
21 they cover up? Because they knew that it was sold to
22 Mr. Jannetti and other clients as being low risk,
23 safe, solid, conservative, money good. These are all
24 things that Mr. Roberts believed and used for
25 suitability and represented. It is critical that he

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
243

1 understood it -- that Mr. Roberts misunderstood the
2 risk and misrepresented the risk.

3 Then he says, Mr. Jannetti understood that
4 higher yield meant higher volatility and that, you
5 know, he had to understand that he was getting a
6 higher potential coupon, not a -- not a -- not a
7 required coupon -- a higher potential coupon,
8 contingent coupon, 15 percent -- that he had to
9 understand and meant higher risk. Didn't want to use
10 the word high risk because it contradicts the entire
11 theory of his closing.

12 You know who believed that you can get 15
13 percent with a low level of risk? Mr. Roberts did.
14 Chuck Roberts definitely believe that you can get a 15
15 percent contingent coupon or yield without a high
16 level of risk. Yet his entire closing, the core of
17 it, is that Mr. Jannetti must have understood that he
18 couldn't get 15 percent yield without a high level of
19 risk. Again, Mr. Jannetti should not have an
20 obligation to understand the risk better than Mr.
21 Roberts. That can't be the case. This entire case is
22 about the level of risk.

23 Again, what did you not hear from Mr.
24 Roberts -- from Mr. Hillis? He talks about the
25 prospectuses, the white -- the white paper, the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
244

1 disclosure. What -- what did the evidence in this
2 case actually reveal? That the risk is based on the
3 underlying. If it's an S&P note, if it's a sector
4 note, if it's a Dynatrace note, every time you have a
5 different underlying with a different implied
6 volatility, that's what drives the risk.

7 So it was up to Mr. Roberts to -- who
8 created these notes, to calibrate his understanding of
9 the risk and disclose it. And the evidence is
10 un rebutted. He didn't think these were high risk. He
11 didn't disclose these were high risk. And every time
12 he fails to understand that, that is a violation of
13 517. That is a violation of his fiduciary duty.

14 They talk about the law, and then they cite
15 it. You heard him say, In Re Short Squeeze. It's a
16 perfect example because there's a fire hose of
17 misinformation coming from Stifel in his three-hour
18 closing, a literal fire hose of misinformation. But
19 I'm going to show you that the source of this, both
20 the facts and the law, is misleading you.

21 This is the Short Squeeze case. He said it
22 out loud: Look at the Short Squeeze case. The Short
23 Squeeze case is a clearing broker case -- not a full
24 service case, a clearing firm case -- and it's
25 interpreting New York law. That's their case. And

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
245

1 Mr. Hillis said out loud: This is a case that you
2 should rely upon. It's controlling in this case.

3 Look at it. Read their cases. New York
4 law, not applicable. A clearing firm case -- not an
5 introducing broker, a clearing firm case.

6 Then Mr. Hillis gets up there and says, oh,
7 517. I know he's a Georgia attorney. He's not a
8 Florida lawyer. I get it. I get it. The 517 isn't
9 something that he deals with in a Georgia case because
10 it's Florida law. But if you're going to come down to
11 Florida, you better know Florida law and you better
12 represent it accurately to a panel.

13 He said to you in closing, 517 only applies
14 in connection with this purchase of an investment. It
15 says it right there in the statute, in connection with
16 the rendering of any investment advice. It could be
17 margin. It could be strategy. It could be
18 concentration. In the rendering of any investment
19 advice.

20 Then as I said to you, Mr. Hillis tells you,
21 this is proof positive -- this document at Number 94,
22 this is proof positive that Mr. Jannetti rejected the
23 Solutions account that he wanted him to have with --
24 that that mimic the philosophy statement. Proof
25 positive.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
246

1 Look at the sleight of hand. Look at the
2 sleight of hand. Jannetti rejected the strategic
3 allocation portfolio. Stifel, those fine people right
4 there, are telling you that this pertains to strategic
5 allocation to the Solutions account. Take a look.
6 Dave Jannetti's tactical allocation -- tactical
7 allocation is not strategic allocation.

8 The amount is \$30 million. He had \$8
9 million in Solutions. This is not for Solutions.
10 This is not for Solutions. But what did Mr. Hillis
11 put in writing and say to you as an attorney who was
12 bound to be upright and ethical with this panel? He
13 said, Jannetti rejected strategic allocation
14 portfolio. Sleight of hand trying to trick you into
15 believing that tactical allocation is strategic
16 allocation and that this was somehow a rejection of
17 the Solutions account.

18 Regrettably, that is literally what is
19 happening every single -- they did it again here. Did
20 it again here, suggesting to you that this was a
21 rejection of the Solutions account. This is a \$40
22 million proposal. This is not for the Solutions
23 account. There was \$8 million in Solutions.

24 Any -- and their expert repeated it, too.
25 There was never a rejection of the philosophy

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
247

1 statement or of any proposal on strategic allocation
2 for the Solutions account. Never.

3 Then they show you a December 30, 2022, text
4 from David Jannetti talking about selling a note
5 because it will not be in the money. Do you know what
6 happened on December 30th, 2022? Mr. Jannetti lost
7 \$16 million. All of the losses were sustained by
8 December 2022. Information that he has about his
9 accounts after he sustained all the losses, this is
10 proof positive of what he understood in 2020 or 2021?

11 Then he goes on -- and -- and we got to
12 spend a moment on this because there's an argument
13 that he should have mitigated. There's an argument
14 that he should have mitigated. What's the argument?
15 He's down -- he's down 1 million. He's down 2 million
16 in unrealized losses, and Mr. Jannetti should have
17 sold and mitigated.

18 What does Mr. Roberts tell his clients,
19 including Mr. Jannetti, in this late 2021 when this is
20 happening? The value fluctuates, but you are
21 massively protected, so nothing to worry about. It's
22 not a real decline. If the markets go down, the notes
23 don't reflect the downside protection.

24 We are all good. These stocks are -- will
25 find their footing very soon. We will look back in

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
248

1 six months and realize the downturn was just a head
2 fake. The notes are doing what they're supposed to.
3 We have nothing maturing in 2023 and nothing to worry
4 about. No money has been lost. All of our notes
5 mature in '23. No money has been lost. We own good
6 stuff, climbing back little by little. The system
7 doesn't take into account the downside barrier
8 protection.

9 So while Mr. Robert is telling Mr. Jannetti,
10 everything is consistent in his text messages and
11 believes what's in these text messages Mr. Jannetti
12 should be selling. And then the height of hypocrisy,
13 Mr. Hillis advances an argument that in December 2021,
14 right when Mr. Roberts makes the realization that
15 there's no reasonable basis suitability for XBI single
16 stock notes and doesn't disclose it to Mr. Jannetti,
17 Mr. Hillis says Mr. Jannetti should have sold.

18 Well, I mean, I agree with him, but it would
19 have been up to Mr. Roberts to tell him, hey, all the
20 structured notes that you own, I don't believe they're
21 suitable for you anymore.

22 Instead, he sits quietly and tells them
23 nothing to worry about until 2023. It's all good.
24 They're coming back. I recommend that you hold. Then
25 they said, it's Mr. Jannetti's fault.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
249

1 I asked -- I asked Mr. Roberts. You felt
2 responsible? I was the manager. I was the manager of
3 his accounts. And you felt responsible for the
4 performance? Listen to what he said. I felt
5 partially responsible. All right. He didn't give me
6 100 percent. Chuck Roberts. But even Chuck Roberts
7 had to concede that he was responsible to a degree.
8 Even Chuck Roberts said, I'm the manager. I was
9 partially responsible.

10 What is their counsel saying here now? We
11 have no responsibility. It was all him. We didn't do
12 anything wrong.

13 Evidence is very clear, and it's
14 undisputable. If it wasn't for Chuck Roberts, we
15 wouldn't be here right now. If it wasn't for Chuck
16 Roberts, Dave Jannetti wouldn't be here right now.
17 This is all Chuck Roberts doing.

18 I asked him every single trade: Did you
19 recommend it? Yes. Did you solicit it? Yes. What
20 does Stifel say? It's Dave Jannetti's fault.

21 We're all also asking -- I want to make sure
22 we're clear about this -- that all foreign fees are
23 assessed against Stifel. Attorney's fees -- we put it
24 on the record that we have a contingency fee
25 agreement, 25 percent. If the panel wishes to see it,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
250

1 we can put it in evidence. Just let me know. We --
2 we are submitting to you that the bill is a \$122,000.
3 I got it right here. Happy to put it in evidence.
4 Here's the bill right here, \$122,000.

5 But it's not required on the Florida law.
6 Those are -- those -- those are the numbers. That is
7 the information. Panel under 517 shall award
8 attorney's fees under the statute if you find that the
9 elements of the statute have been met.

10 Mr. Hillis wants to diminish all of the many
11 text messages and misrepresentations made by Mr.
12 Roberts in all the text message we reviewed. Here's
13 the problem. Mark Stephenson, Lori Lucarelli, the
14 actual manager that supervised Mr. Roberts, all said
15 they couldn't be sent.

16 They violate the policies of FINRA and
17 Stifel. It -- had they seen them in advance, they
18 cannot be sent. They're false and misleading. If it
19 were just puffery or just inconsequential, as Mr.
20 Hillis wants to suggest, why would the managers and
21 their own -- and their experts say that you cannot say
22 those things?

23 The withdrawals. Let's talk about the
24 withdrawal. I asked Chuck Robert: Does a withdrawal
25 cause a loss? No, withdrawing money from your account

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
251

1 does not make your structured note go down value.

2 That's simply not the case.

3 Concentration, nowhere, nowhere.

4 Prospectus, white paper, anywhere, does Stifel ever
5 advise Mr. Robert -- Mr. Jannetti that the level of
6 concentration he had increased the level of risk. Mr.
7 Jannetti believed exactly what Mr. Roberts believed
8 because he relied on Mr. Roberts.

9 He never invested in structure notes before.
10 He never invested in structure notes before. Mr.
11 Jannetti knows nothing about the XBI. He doesn't --
12 he's not a biotech. I asked him, are you some kind of
13 biotech investor that you've got 45 percent of \$28
14 million invested in XBI? He knows nothing about
15 Dynatrace, nothing about any of those stocks that were
16 the underlying. All he knows is that Mr. Roberts
17 recommended them, made representations about them, and
18 he accepted that and invested in them.

19 Mr. Hillis wants to talk about crypto. They
20 love to talk about hard money lending, Braven. None
21 of those have anything to do with this case. They are
22 all red herrings. There's simply no connections.
23 Objections were even sustained when Mr. Hillis sought
24 to elicit more testimony on -- on these issues, when
25 he sought to elicit more testimony about stocks not at

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
252

1 issue in the structured note account.

2 The evidence -- the objections were
3 sustained. The evidence didn't come in, and yet Mr.
4 Hillis, on behalf of Stifel, wants to plow that
5 ground, try to score some superficial points.

6 And then Mr. Hillis says, well, Chuck --
7 well, Dave Jannetti was really aggressive. He was a
8 really aggressive guy, and he was aggressive at
9 Stifel. Hold on a minute. He's got 80 percent of his
10 assets at Stifel in structured notes. Chuck Roberts
11 says that when you go to structured notes, you're
12 being more conservative.

13 Do we pull from building those equities and
14 increase the note allocation? I feel very comfortable
15 with the note strategy for you. Chuck Roberts -- I'm
16 going to opt towards more conservative. And he said,
17 the more notes you have, the more conservative you
18 are. Yet Wayne Hillis, on behalf of Stifel, is
19 telling you, no, he's being aggressive by being 80
20 percent in structured notes.

21 Just want to be clear. You have 80 percent
22 of the funds in structured notes and 20 percent in
23 Solutions. You got to ask yourself why? Why is he 80
24 percent in notes? For the opposite reason that Mr.
25 Hillis is trying to convince you of. Because the

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
253

1 evidence is that what Mr. Roberts told him is, the
2 more you go to structured notes, the more conservative
3 you are. That's his word. I'm trying to get you a
4 conservative double digits.

5 Mr. -- Mr. Roberts texted. He wrote these
6 words. He wrote these words, and he testified on the
7 road that he believed them. He believed that the
8 structure note strategy was conservative. The
9 evidence is that it's high risk. When they are
10 confronted with this paradox, and they can't square
11 they can't square it.

12 But what did they do? They covered it up,
13 and they came into this trial and contradicted their
14 prior positions in this case and in other cases and
15 said, you know what? It's not high risk. And the
16 risk -- and now we heard the new position. The risk
17 doesn't matter. The risk doesn't matter. Mr. Hillis
18 said it loud and clear. The risk doesn't matter.

19 CHAIRPERSON SALIS: I need a --

20 MR. EREZ: Sure thing. Sure.

21 (OFF THE RECORD)

22 (ON THE RECORD)

23 MR. EREZ: I want to continue where I was,
24 if I might. This whole argument that it doesn't
25 matter what level of risk the notes were is completely

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
254

1 contradicted by their own expert witness because I
2 asked him, can you represent to a client that an
3 investment is low risk or conservative and then
4 document that account as high risk and sell high risk
5 investments? And the expert said, absolutely not.
6 That contradicts People's entire closing, and that is
7 what happened here.

8 And by the way, I'm happy that Mr. Hillis
9 spent the time to go through all those text messages
10 and reinforce what was communicated between Mr.
11 Roberts and Mr. Jannetti because when you take all of
12 that into account -- and I was paying close
13 attention -- and you take into account all the text
14 messages we've shown that are in evidence in this
15 case, what you will never find and what Mr. Hillis
16 failed to ever show was any disclosure to Mr. Jannetti
17 that the structured notes were high risk, that the
18 Solutions account was not being managed in -- in --
19 consistent with strategic allocation, that the account
20 with the concentration, with the leverage, was a very
21 high risk account. You don't see any of that
22 anywhere.

23 And Mr. Hillis had three hours to show you
24 every single text he want to show you. And when you
25 have a lack of disclosure to that effect, you have met

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
255

1 every single count the Claimants have brought.
2 Because in order for Mr. Roberts to have discharged
3 his disclosure obligations and Stifel to disclosure --
4 to discharge disclosure obligations, they would have
5 had to tell Mr. Jannetti: Mr. Jannetti, the
6 structured note linked to Twilio, like the Dynatrace
7 linked to XPI, that is a high risk investment.

8 And it is very highly unlikely that you get
9 all of your coupons and that there is a high
10 likelihood that you will have a significant loss of
11 capital.

12 That's what a disclosure looks like that
13 would be in conformance, in compliance, with Mr.
14 Roberts's obligations. Mr. Jannetti, you are heavily
15 concentrated in structured notes. That increases your
16 level of risk. Mr. Jannetti, the level of
17 concentration plus the level of margin makes your
18 account a very high risk account.

19 That's what disclosure looks like. You
20 didn't see any of that. And, again, I'll repeat. And
21 you've seen over the course of 18 days the exact
22 opposite side of the spectrum. Safe, super solid,
23 very solid, not conservative, not risky, I'll invest
24 very carefully.

25 None of that is conveying a high level of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
256

1 risk. It is conveying a low level of risk, and that's
2 what this case is about. You can't tell someone, I've
3 got these notes that pay 12-13 percent. It's got a
4 low level of risk. And in fact, it's very risky,
5 which Mr. -- which Mr. Roberts himself admitted in two
6 other cases and then in -- and so did there were other
7 witnesses and experts, and then in this case, seek to
8 deny it.

9 Because if you accept that testimony of Mr.
10 Roberts from DeLuca and Muhlbauer, which is in
11 evidence -- if you accept their own expert testimony
12 with impeachment from Deluca and Muhlbauer and you
13 accept the CEO's testimony, these are high risk, every
14 single claim -- 517, negligent -- negligent
15 misrepresentation, fraud -- every single claim --
16 breach of fiduciary duty -- every single claim, all
17 the elements of the claim, are met. That is why Mr.
18 Roberts -- Mr. Hillis says the level of risk isn't
19 important.

20 It was so important that he conspired with
21 Mr. Roberts to alter their testimony in this case. We
22 showed it to you. We showed you how they use the same
23 words, pyramid of risk. Where -- where did you see
24 Mr. Roberts in the impeachment testimony Deluca and
25 Muhlbauer use the word pyramid of risk? Never. He

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
257

1 never used that word. That was a brand new word that
2 Mr. Hillis shot up, said he met with Mr. Roberts, and
3 they conspired -- they conspired to mislead you and to
4 come up with this brand-new story and try to convince
5 you of what they convinced of Mr. Jannetti, that the
6 structured notes are not high risk.

7 I want to mention something. People that
8 have been misled and that are victims of investment
9 fraud don't know they're being defrauded at the time
10 they're being defrauded. Otherwise, you'd never be a
11 victim.

12 Every single person that's a victim of
13 investment fraud is unaware they're being victimized
14 or defrauded at the time they're being defrauded. Mr.
15 Jannetti filed this case within two months of getting
16 wiped out. Within two months. Apparently, that's not
17 fast enough for people. They would have preferred
18 something earlier.

19 When another client complained to Mr.
20 Roberts, what did Mr. Roberts do? He buried it,
21 didn't forward the text, didn't want his -- his
22 managers to see the complaint.

23 I already mentioned -- and I think it's
24 important to repeat -- no ratification on the 517, no
25 defense to 517, no apportionment of fault under 517,

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
258

1 no apportionment of fault under breach of fiduciary
2 duty or fraud, no apportionment of fault under
3 intentional torts. That's Florida law.

4 Again, not a single text message in this --
5 he's got a 200-page PowerPoint -- 200-page PowerPoint.
6 Did he show you a single text from Mr. Jannetti where
7 Mr. Jannetti said -- either received this information
8 and said these are high risk or conveyed and said, I
9 understand this is a very risky investment in regards
10 to the structure note? No, he did not.

11 The spreadsheet. The spreadsheet took 15
12 minutes to put together on Google. All he did -- we
13 saw it in the first day of -- of -- of testimony by
14 the client. He got a -- he got a spreadsheet from the
15 Chuck Roberts's office, and he said it took him 15
16 minutes to put them on a -- to put it on Google and to
17 put the live feed in there. Fifteen minutes. And it
18 replicated -- we saw. It replicated exactly what
19 Tyler Connolly had sent him. Took him 15 minutes.

20 That spreadsheet doesn't distinguish between
21 underlyings. There's no discussion of implied risk,
22 implied volatility. There's no discussion of risk.
23 There's no -- nothing in there that talks about XBI or
24 the level of implied volatility risk for Twilio or
25 Dynatrace. It's just tracking the information that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
259

1 they gave him because Mr. Jannetti was interested in
2 getting his coupon payments, and he wanted to be
3 assured all the time that he was getting those coupon
4 payments. It was critical to him to get those coupon
5 payments, and he was assured just like Mr. Roberts
6 believed, that this was not a high risk way to get
7 these coupon payments.

8 Listen, Mr. Roberts believed that he had
9 this strategy. And I put it up there before. He was
10 very confident that he could use the barrier, pick the
11 underlying, that he was sophisticated and experienced
12 enough to do all that to conserve capital and get the
13 coupon. That's what he believed.

14 Mr. Hillis said it was unreasonable for
15 David Jannetti to rely and believe what Chuck Roberts
16 told him. That's part of their defense, that it was
17 unreasonable for him to rely on Chuck Roberts. The
18 entire fiduciary duty is based upon trust and
19 confidence. And all you have to do is look at the
20 testimony that we've given you in the text messages by
21 Chuck Roberts and then ask yourself, did Chuck Roberts
22 understand the risk of single stock and XPI structured
23 note when he sold them to Dave Jannetti?

24 If you conclude that he did not understand
25 the risk, you must find for the Claimant on all

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
260

1 counts, including and especially 517. Their position,
2 Dave Jannetti, who never invested in a note before,
3 not a Series 7 broker, not in the securities industry,
4 not customizing notes, doesn't know what implied
5 volatility means, never traded option before, that he
6 should understand the risks better than Chuck Roberts.
7 That is an untenable position.

8 Then he said, Jannetti had the -- listen
9 carefully to what he said -- the experience and
10 expertise to understand the risk. As opposed to Chuck
11 Roberts? Chuck Roberts is a licensed professional,
12 Series 7, managing \$1.5 billion. He is a licensed
13 securities professional, and he didn't understand the
14 risk.

15 And, again, I go back to January 2022. I go
16 back to this. Don't stop selling the notes. You
17 don't change the action that you're taking if you
18 didn't come to a realization that what you thought
19 before was not accurate. That is the key. This is
20 why we took the time to demonstrate this flowchart to
21 you, what he believed, what he represented, what
22 happened in January 2022, and what the testimony is.

23 What Mr. Hillis is doing is conflating the
24 mechanics of a structured note with the risk of a
25 structured note. You could understand the mechanics

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
261

1 of a structured note. It's got a barrier. It's a
2 two-year term. It's linked to an underlying. You can
3 understand all that without understanding the risk
4 because the risk is driven by the underlying. And the
5 underlying is XBI, KRE, Dynatrace, Twilio, Palantir.
6 That's what drives the risk, not the structure, not
7 the framework.

8 So you can understand the mechanics, you can
9 put on a chart and understand if it goes 35 percent
10 below, without understanding or fully appreciating the
11 risk because the risk is driven by the underlying.

12 And there is no evidence that Mr. Hillis can
13 point to that Dave Jannetti understood the risk of XBI
14 versus Dynatrace versus Palantir. No single scintilla
15 of evidence.

16 And the evidence is Mr. Roberts didn't
17 understand it. Yes. Mr. Roberts understood the
18 mechanics of structured notes: two-year term,
19 barrier, linked to an underlying, worst of. He
20 understood that.

21 But what he failed to appreciate because of
22 his arrogance and his belief -- his belief, his
23 confidence. Confidence. It's not going down 25 or
24 30. He was so confident and arrogant that he believed
25 he could put these notes together, pick that

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
262

1 underlying, pick that barrier, customize it, which is
2 why he customized the notes.

3 When Hillis said, why didn't you sell the
4 calendar notes, he didn't sell the calendar notes
5 because he wanted to create custom notes based on his
6 views.

7 By the way, the representation by Mr. Hillis
8 that Mr. Roberts was relying upon Mr. Jannetti's input
9 and Jannetti's views to create these notes is
10 laughable. Not a scintilla of evidence. Not a shred
11 of evidence that Mr. Jannetti told him he wanted XBI.
12 Or had a view on XBI. Or believed XBI was a good ETF.
13 Or believed that Dynatrace was a good ETF. That was,
14 again, part of an ongoing effort to mislead this
15 panel.

16 So you can understand the mechanics without
17 appreciating the risk of the underlying. And that is
18 what happened here with Chuck Roberts.

19 We're not saying he doesn't understand the
20 nuts and bolts of the structured notes. He did. But
21 if you read his own words and listen to his own
22 testimony, he didn't appreciate the risk. And when he
23 did, it was too late. And what did he do? He
24 concealed it.

25 He didn't got to Mr. Jannetti and say, Mr.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
263

1 Jannetti, you know what? I've lost confidence in
2 single-stock notes. I've lost confidence of an XBI.
3 It's time to pivot and get out.

4 That never happened. If that happened,
5 we're not sitting here. That never happened.

6 The white paper, the white paper, the white
7 paper: How many times have we heard about this white
8 paper? The white paper is generic, doesn't speak to a
9 single underlying. Doesn't calibrate the risk for the
10 underlying.

11 What does their own expert admit? It's up
12 to the broker to look at the underlying of the note,
13 understand the level of risk that's being driven by
14 the underlying, and make a suitability determination,
15 and based on that particular level of risk -- and
16 disclosure has to be made based on that level of risk.
17 So there's nothing in the white paper that tells Mr.
18 Jannetti that the -- the Dynatrace note -- or the
19 Palantir note has an implied volatility of 50. That's
20 a very high risk note. There's nothing in there.

21 Yes, it does a fine job of explaining the
22 nuts and bolts of the mechanics. We don't dispute
23 that. But that's not the issue in this case.

24 You cannot conflate mechanics and risk. It
25 is the risk of the underlying the drove the risk of

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
264

1 the notes.

2 Mr. Hillis, on behalf of Stifel, tries to
3 recast the claim. The claim is, according to the --
4 their closing argument, that Mr. Jannetti's claim is
5 that he was told there was no risk, and he would 100
6 percent get every coupon. That's not what we claim --
7 the (inaudible) claim. That's not what the evidence
8 is.

9 It's not -- it's not that extreme. The
10 evidence is he was told that it was solid, very solid.
11 Almost like a bond. Not risky. Conservative. He
12 understood, mechanically, a coupon could be missed,
13 and he was tracking for that. But he was told the
14 level of risk was very low. Never told that the level
15 of risk, risk of missing coupons, risk of losing
16 capital, was very high.

17 Stifel ignores the level of risk, which is
18 why I started with the compliance manual, and I said
19 they gutted and eviscerated the entire securities
20 industry because the entire industry is about the
21 calibration of risk.

22 He says the 517 is the same elements as 10
23 v. 5? Not true. No intent requirement. It's a
24 negligent standard. He says that in the Rousseff case
25 that it's a different standard for -- different

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
265

1 standard of proof and damages because it was a
2 rescission case. And a different standard of proof.

3 I've been practicing law for 28 years, and
4 arguing 517 cases for 28 years. I've never heard,
5 besides Mr. Hillis, a lawyer even attempt to make that
6 argument. It is a blatantly false and misleading
7 argument. The standard of proof under 517 does not
8 vary based on the type of relief you want. That is
9 just something that Mr. Hillis deemed important to
10 make up.

11 Sense would do. No meeting of the minds on
12 the Solutions account. That's a new one. I give Mr.
13 Hillis credit for origination of a new idea. That is
14 completely false and misleading. They have a signed
15 contract that this is going to be a Solutions account
16 with strategic allocation. They have internal
17 procedures and guidelines that say that this is going
18 to be a model based on -- based on a philosophy
19 statement, and we show you the philosophy statement.

20 Philosophy statement said no more than 10
21 percent in single stock. This account? 100 percent
22 single stocks. Then it generated alert, alert, alert
23 after alert, over 60 alerts.

24 What did Lori Lucarelli say who takes her
25 job very seriously? I don't have to address those

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
266

1 alerts. I don't have to address those alerts. So not
2 only do they violate the philosophy statement, being
3 invited -- they violated the Solutions parameters,
4 which has a 50 percent limit on sector compensation,
5 which has a limit on how -- how long you can hold
6 cash.

7 It is preposterous to argue that the was no
8 meeting of the minds. It is literally a signed
9 contract. A signed contract where Mr. Jannetti signed
10 to -- to enlist in the strategic allocation Solutions
11 program, which, according to their own documents, has
12 to follow a proscribed philosophy statement. Their
13 own witnesses, and we've given you that testimony,
14 their own witnesses say that.

15 Then he says, well, the cash is being held
16 in 2022 in the Solutions account for the -- for the --
17 for the tax sale at the end of 2022. That's not true.
18 We saw month after month after month of \$2 million in
19 cash, and then we saw the internal calculations by
20 Tyler Connolly and the Chuck Roberts's team where they
21 were using the cash to get a higher release to have
22 more margin in the structured note account.

23 Then he said, oh, Dave Jannetti knew the
24 accounts were linked. He knew they were linked. And
25 the proof is here's the client agreement that says

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
267

1 we're going to link it. That -- that doesn't prove
2 that he knew it was linked.

3 They have no defense to the Solutions
4 account. It's a discretionary account. This is
5 what -- this is what Stifel says.

6 I guess this one won't rip. Oh. Maybe it
7 will.

8 This is what Stifel says. Solutions program
9 managed on pre-screened investment approach. That's
10 the philosophy statement. To have a well-defined
11 investment approach. That's the philosophy statement.
12 Here's the philosophy statement: Blended, 40 to 50
13 holdings, 75 percent third-party managers, moderate
14 risk. Here is the benchmark. Violated every single
15 aspect of solutions. Every single aspect.

16 Mr. Hillis says here's the testimony from
17 Mr. Jannetti about the mortgage loan. And I asked
18 them who originated it. He said I asked them. And
19 then he said, in the testimony, Page 888 if you want
20 to bring it up, and then he said he's -- I asked him
21 is this something I should do?

22 And he said yes, you should do this and
23 invest the money.

24 And then Mr. Hillis says, I didn't get the
25 answer I was expecting. I got the exact answer I was

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
268

1 expecting. I got the exact answer. I knew the story.
2 Mr. Jannetti brought it up on the mortgage loan and
3 said, what do you think?

4 And -- and Mr. -- this was their 88. Their
5 88. Put it up, please. And Mr. Roberts said to him,
6 according to the testimony that Mr. Hillis wants to
7 point to, you should do that, and give me the money to
8 invest.

9 It doesn't matter that Mr. Jannetti had the
10 idea first. If Mr. Roberts endorses it, says you
11 should do this, agrees with it, that is a
12 recommendation. I asked that of Mr. Heller; he
13 agreed. Mr. Hillis did not elicit any testimony from
14 any expert that contradicted Mr. Heller's testimony.
15 He never asked. He never asked his own expert is that
16 recommendation? That is a recommendation. That's
17 something that I'd recommend, he says. But we can
18 help you. I can help you get a -- get mortgaged with
19 that. And that is a recommendation. That -- that --
20 that's what it -- recommendation is in the securities
21 industry.

22 Chuck Roberts admitted he recommended
23 margin. I won't show you the testimony. We have a
24 whole tab on it in -- in -- in the closing binder. He
25 admitted he recommended the use of margin. According

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
269

1 to Mr. Hillis's closing on behalf of Stifel, Chuck --
2 Dave Jannetti created the notes, bought them on an
3 unsolicited basis, did everything himself; Chuck
4 Roberts had nothing to do with it.

5 That -- that -- this is not the case. Every
6 single note was a custom note created by Chuck Roberts
7 without ever talking to David Jannetti. Not once did
8 he talk to David Jannetti in advance and get, hey,
9 David, I'm thinking about doing a note, what -- what
10 do you want to solve for? What do you think the
11 market's going to do? There was never anything like
12 that.

13 He created the notes. He hedged the notes.
14 He then sold them across his book of business.

15 He said David Jannetti is sophisticated.
16 Ask yourself, is he more sophisticated than Chuck
17 Roberts?

18 Then he says David Jannetti was very engaged
19 in the relationship with Chuck Roberts; you know what
20 we call that? We call that taking the bait. Yes,
21 Chuck Roberts engaged with David Jannetti, flattered
22 David Jannetti, showed a lot of interest in David
23 Jannetti, invited David Jannetti.

24 And I asked him, is that something you do
25 with your clients? You try to get close to them in

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
270

1 order to accumulate -- to -- to collect their assets?

2 And he goes, that's part of my job.

3 He didn't deny it. He said that's part of
4 my job.

5 Again, I just want to revisit the text
6 messages between Chuck Roberts and -- and David
7 Jannetti. You have all the context. You've seen all
8 the communications. What did he tell him?

9 Solid. Very solid. Prudent. Admitted he
10 told them it was almost a substitution for bonds.
11 Told all the clients that they were not risky. He
12 told clients that the more you go towards notes, the
13 more you go towards conservative.

14 These are all false and misleading
15 statements. If you accept that these notes are high
16 risk, all those as representations are false and
17 misleading.

18 Then this: Mr. Hillis says that the
19 Claimants are obsessed with the texts. And that
20 they've been punished for the texts. And you should
21 overlook the texts.

22 We're obsessed with the texts because the
23 texts reveal the truth about what happened. It
24 reveals the truth about what Mr. Roberts was saying at
25 the time in real time, not subject to

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
271

1 mischaracterization and in the contents of those text
2 messages, not just the act of texting.

3 That \$35 million fine? That doesn't deal
4 with the content of the texts. That deals with the
5 act of texting. It is the content in this case that
6 is equally important. The misleading nature of the
7 representations.

8 Then he says only 2 states out of 30 require
9 heightened supervision. I asked Stevenson, Lucarelli,
10 Peck, Kennedy. Nobody's ever heard of two states
11 requiring heightened supervision.

12 What does Stifel say? Well, 28 didn't, so
13 that's -- that's pretty good. That's the type of --
14 of logic that they're trying to apply to this case and
15 trying to convince you of. Blame David Jannetti. His
16 own responsibility.

17 There's a fiduciary relationship here. He
18 is a legal fiduciary under the law. No need for
19 concentration letter according to Mr. Hillis because
20 he knew the risk of concentration. There was no
21 evidence that he understood that Stifel's got a limit,
22 a concentration. That concentration in structure
23 notes increased risk, that he's exceeding their
24 internal guidelines. None of that was disclosed to
25 him.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
272

1 Then he kept saying, it's -- I don't think
2 you remember this far back, but it was, like, four and
3 a half hours ago. He started out saying in Dave
4 Jannetti world, and he kept on saying you could invest
5 to track your investments, and then you get your money
6 back. He kept saying in David's world. In David's
7 world.

8 Well, I'm going to talk about this world
9 that we're in, in FINRA arbitration. Yes, if you make
10 misrepresentations of the risk of the investment,
11 you're liable. If you fail to understand the risk of
12 an investment, you're liable. If you fail to disclose
13 risk concentration, you're liable. There is
14 accountability in liability. Not in David's world; in
15 this FINRA arbitration that we're in, in the legal
16 system. There is accountability. There are
17 consequences for employee Chuck Roberts.

18 Part of their closing was, don't reimburse
19 David Jannetti for market losses. This is not a
20 market loss case. This is a blowout case -- a margin
21 blowout case. Performance from inception to close,
22 and the 2022, negative 86 percent performance. That's
23 not the market.

24 I showed you during the same period of time,
25 whether you take all of the accounts or just a

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
273

1 structure product account, everything is positive if
2 you were in the marked, which is the SNP 500.

3 This is not a market decline case. He would
4 be ahead by millions if he was in the market and
5 taking market risk. Blame the market is not a defense
6 in this case.

7 He kept talking about outside investments,
8 brave in, hard money like -- we're not suing on those
9 investments. Those investments, as the panel knows,
10 not at -- not at issue.

11 Then he talks about other accounts. U.S.
12 Trust says he's -- he's -- he's used to doing margin.
13 Again, sleight of hand. No margin at U.S. Trust. A
14 credit line loan that we use to invest in real estate.
15 Not the same used to invest in the securities account
16 that is the collateral for the loan.

17 Two different things. Never did margin
18 before. Never did structured notes before.

19 Again, I go back to this is all due to Chuck
20 Roberts. Every single investment was recommended;
21 everything was solicited.

22 Two more minutes and I'm done.

23 Bring up -- bring up July 10, 2024. The
24 DeLuca testimony that's in the impeachment binder.
25 Bring it up.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
274

1 A big part of Mr. Hillis's closing was based
2 upon the fact that Mr. Jannetti rejected the full
3 menu, and that the full menu was being recommended.
4 Show us the language for a van door.

5 What did -- what did -- what did Mr. Roberts
6 say in the DeLuca case, where -- I'll just leave it at
7 that. What did he testify in the DeLuca case? We
8 customized this -- highlight it. Show it.

9 So it really depends. These are -- the
10 allocation is customized. It's not cookie cutter.
11 This is in the impeachment tab. Mr. Hillis spent a
12 lot of time in his closing saying that Mr. Jannetti is
13 the one that wanted cherry picking or individual
14 stocks, and then he rejected the full menu.

15 How many times do we hear that? Rejected a
16 full menu. And I cross-examined Mr. Roberts and used
17 this impeachment. And I showed him in the other case
18 he testified no, it's not cookie cutter, that he
19 customizes, based on that list for the client.

20 And then I showed him -- I said, you ever
21 use the word cherry picking? He goes, I don't use
22 that word. Then I showed him his text message with
23 Dave Jannetti. He goes, if you cherry pick, you get
24 13 percent. He goes, yes, I -- I guess I do use that
25 word.

HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
275

1 Selecting individual notes is what Mr.
2 Roberts says he does. He customizes. It's not cookie
3 cutter. Those are his words.

4 And I'll leave you with this. This is a, as
5 you all know, a very serious case. Mr. Jannetti has
6 been harmed very significantly only and because of
7 Chuck Roberts and Stifel. The evidence is clear. We
8 ask that you sent the message, apply the full force of
9 the law to this case, to the facts and the evidence
10 that we presented, and award 517 damages. Send a
11 message in the form of very significant punitive
12 damages, which we will leave to your discretion and
13 good judgment. Thank you.

14 CHAIRPERSON SALIS: We'll come back in a few
15 minutes to get the books that's (inaudible).

16 (End of Audio Recording)
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HEARING
JANNETTI V. STIFEL, NICOLAUS & CO.

January 24, 2025
276

CERTIFICATE OF TRANSCRIPTIONIST

I WENDY K. SAWYER, hereby certify that I was authorized to and did transcribe the provided recording and that the foregoing transcript is a true transcript of said electronic recording to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 17th day of March, 2025.



WENDY K. SAWYER, CDLT